



County of Los Angeles  
**CHIEF ADMINISTRATIVE OFFICE**

713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012

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DAVID E. JANSSEN  
Chief Administrative Officer

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE BRATHWAITE BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

October 21, 2003

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**JOINT RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICE AND  
CHIEF INFORMATION OFFICE FOR APPROVAL OF AGREEMENT WITH  
STROHL SYSTEMS GROUP, INC. FOR BUSINESS CONTINUITY SOFTWARE  
AND CONSULTING SERVICES  
(ALL DISTRICTS) (3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Chair of the Board to sign an Agreement with Strohl Systems Group, Inc. for a three-year term to acquire licensing for Business Continuity Planning (BCP) software, software maintenance, technical support, training, and implementation services to support the development of a County BCP Program, with a total County maximum obligation of \$400,000.

**PURPOSE OF RECOMMENDED ACTION**

The purpose of this action is to contract with Strohl Systems Group, Inc. (Strohl) to purchase software licenses, software maintenance, technical support, training, and consulting services for installation and customization of BCP software tools to support the development of a County BCP Program. The County BCP Program will provide a structured process and approach to deal with the consequences of the loss of critical County facilities, resources, services or operational processes in the event of intermittent outages or catastrophic/extended disasters.



### Implementation of Strategic Plan Goals

This action supports the County's Strategic Plan Goals for Service Excellence, Fiscal Responsibility and Organizational Effectiveness. The County's risk to these known threats, coupled with the terrorist attacks on September 11, 2001, has raised awareness to the importance of developing a Countywide business continuity planning process. The development of a County BCP program establishes a structured process that addresses how the County will continue to function and provide critical services until normal facilities and resources are restored after a disruptive event. Failure to adequately plan for disruptions compromises the County's ability to meet these goals and jeopardizes the delivery of critical services to the County's residents.

### JUSTIFICATION

On July 2, 2002, your Board directed our offices, together with the Internal Services Department (ISD), and the Auditor-Controller (A-C) to prepare scope, time, and cost estimates required for development of a Countywide BCP Program. The genesis of this Board motion was a June 2002 A-C report on ISD's plan for Disaster Recovery of the County's main data center assets, which identified weaknesses in both ISD's and the County's ability to recover its operations during a disaster. In addition, regulatory requirements under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 call for the development of business continuity/disaster recovery plans by County departments that provide health care services.

To respond to this motion, a BCP working group was formed to assess the County's environment and to provide recommendations for moving forward. A BCP Feasibility Study was submitted to your Board on February 18, 2003. The study found weaknesses in the County's business continuity preparedness that would complicate efforts to restore time-sensitive services and business processes. It recommended the establishment of a County BCP Program to provide a structured methodology for the identification and timely restoration of critical services and processes in the event of a disaster. On March 4, 2003, your Board approved development of the County BCP Program and authorized the expenditure of \$400,000 to purchase software and consulting services.



The BCP software tools acquired under this Agreement will support the development of the County's BCP Program by:

- Identifying and documenting critical departmental services and processes;
- Facilitating the standardized development of individual departmental recovery or contingency plans;
- Simplifying maintenance and change management processes to ensure the currency of plans;
- Providing the ability to track critical activities to ensure timely and thorough planning;
- Automating the plan distribution and reporting to support management of business continuity activities;
- Developing an enterprise repository of plan information to facilitate collaborative analysis and planning; and
- Providing the ability to "roll-up" individual departmental plan information into a County enterprise plan to coordinate resources and to maintain and recover critical services.

Establishing a comprehensive County BCP Program that addresses the spectrum of potential disruptions impacting County services and operations will be an ongoing process requiring a strong commitment and support from the Board and County executive management.

The following lists the objectives to be achieved through the implementation of a County BCP Program.

- Identifying and documenting critical, time-sensitive services/processes, identifying their dependencies and interdependencies, assessing the impacts associated with the loss of critical services/processes and establishing viable recovery time frames;
- Establishing a priority ranking of services/processes and application systems in line with their importance to the overall function of the County to ensure they are restored within their respective recovery windows and to properly size the recovery/restoration platform and strategy;
- Identifying, evaluating, and implementing pragmatic and viable recovery strategies (internally or commercially available) that would enable each critical service/process to be recovered within required time frames;
- Developing department plans and an overarching County enterprise plan to recover critical time-sensitive services/processes;
- Developing a testing and maintenance process to validate the plan(s) and their effectiveness; and
- Building competencies internally within the County to maintain and expand the County's BCP Program over time to meet changing County requirements.



### **FISCAL IMPACT/FINANCING**

The expenditure of \$400,000 from the County's Information Technology Fund (ITF) was authorized by your Board on March 4, 2003. Upon approval of this Agreement by your Board, the ITF will fund the software licensing, implementation services, software maintenance, technical support, training, and optional consulting services as detailed below.

Description	Amount
Software Licensing	\$ 166,700
Implementation Services & Training	146,949
Software Maintenance & Technical Support	37,435
Optional Consulting Services	48,916
Total	\$ 400,000

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

This Agreement will become effective upon Board approval and will have a three-year term. It will purchase perpetual software licenses, software maintenance, technical support, training, and consulting services for the installation and customization of BCP software tools to support the development of a County BCP Program. In addition, the Agreement locks rates for maintenance and technical support, should the County elect to purchase these beyond the three-year term.

Strohl agrees to all of the County's standard terms and conditions, including compliance with the Jury Service Program, Child Support Program, Consideration of GAIN/GROW Participants for Employment, and the Safely Surrendered Baby Law.

The terms and conditions of the Agreement have been approved as to form by County Counsel. This Agreement is not a Proposition A contract and is, therefore, not subject to the requirements of the Living Wage Program (County Code Chapter 2.202).

### **CONTRACTING PROCESS**

Strohl was selected through a formal open, competitive solicitation process. The Chief Information Office prepared and released a Request for Proposals (RFP) on June 9, 2003. The RFP was distributed to 28 known business continuity vendors and interested individuals and was posted on the County's "Doing Business with the County" Website. A Proposers' Conference was held on June 23, 2003, to present an overview of the RFP and to answer vendor questions.

The evaluation process followed recommended County guidelines. The proposal





evaluation committee was comprised of representatives from our offices, the A-C, ISD, and Department of Public Works. The committee's evaluation was based upon criteria described in the RFP, which included experience and capability, work plan, response to County functional and technical requirements, references, and proposed price. The evaluation process included reference checks, a comprehensive review of the proposals, and oral presentations and software demonstrations by the finalists. The evaluation committee reached consensus at each phase of the evaluation process.

Based upon the evaluation, Strohl was found to be the most responsive and qualified proposer, as it demonstrated a good understanding of the RFP Statement of Work and County requirements, and presented the lowest total cost.

The Community Business Enterprise Program participation for the two finalists is shown in Attachment 2. The proposed contractor was selected without regard to gender, race, creed or color for award of a contract.

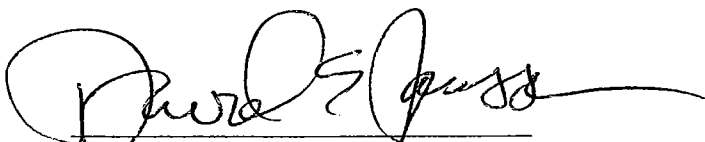
#### **IMPACT ON CURRENT SERVICES (OR PROJECT)**

The BCP software tools acquired under this Agreement will enhance the overall cohesiveness of the County's BCP activities and will streamline the development and maintenance of departmental plans and an overall Countywide plan. A comprehensive County BCP Program will help ensure the delivery of critical County services that may be compromised in the event of intermittent outages or catastrophic/extended disasters.

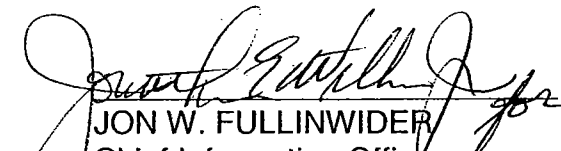
#### **CONCLUSION**

Instruct the Executive Officer, Board of Supervisors to return four (4) signed originals of the Agreement to the Chief Information Office.

Respectfully submitted,



DAVID E. JANSSEN  
Chief Administrative Officer



JON W. FULLINWIDER  
Chief Information Officer

JWF:GM:ygd

Attachments

c: Auditor-Controller  
County Counsel  
Executive Officer, Board of Supervisors



**COMMUNITY ENTERPRISE PROGRAM  
INFORMATION SUMMARY**

This information was gathered for statistical purposes only. On final analysis and consideration of award, selection was made without regard to gender, race, creed, or color.

<b>FIRM INFORMATION</b>		<b>STROHL SYSTEMS GROUP, INC.</b>		<b>SUNGARD RECOVERY SERVICES, LP</b>	
Cultural/Ethnic Composition		% Ownership		% Ownership	
		Male	Female	Male	Female
Owners/ Partners	Black/African American	0%	0%	N/A	N/A
	Hispanic/Latino	0%	5%	N/A	N/A
	Asian or Pacific Islander	0%	0%	N/A	N/A
	American Indian	0%	0%	N/A	N/A
	Filipino	0%	0%	N/A	N/A
	White	76.6%	18.4%	N/A	N/A
		# of Employees		# of Employees	
Owners/ Manager	Black/African American	0	0	10	4
	Hispanic/Latino	0	1	2	2
	Asian or Pacific Islander	0	0	2	2
	American Indian	0	0	0	0
	Filipino	0	0	0	0
	White	18	6	218	53
Staff	Black/African American	6	3	127	40
	Hispanic/Latino	1	1	56	12
	Asian or Pacific Islander	1	2	36	10
	American Indian	0	0	2	1
	Filipino	1	0	0	0
	White	67	41	760	319
TOTAL # EMPLOYEES		94	54	1213	443
BUSINESS STRUCTURE		Partnership		Corporation	



**AGREEMENT  
BY AND BETWEEN  
THE COUNTY OF LOS ANGELES  
AND  
STROHLS SYSTEMS GROUP, INC.  
FOR  
BUSINESS CONTINUITY PLANNING  
SOFTWARE AND SERVICES**

**October 6, 2003**

**Version 5.2**



# TABLE OF CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
<b>1. APPLICABLE DOCUMENTS AND DEFINITIONS .....</b>	<b>1</b>
1.2 Entire Agreement.....	2
1.3 Definitions.....	2
<b>2. ADMINISTRATION OF AGREEMENT – COUNTY .....</b>	<b>8</b>
2.1 County's Project Director .....	8
2.2 County's Project Manager.....	9
2.3 County Personnel .....	9
2.4 Approval of Work .....	10
2.5 Approval of Invoices .....	10
<b>3. ADMINISTRATION OF AGREEMENT – CONTRACTOR .....</b>	<b>10</b>
3.1 Contractor's Project Director .....	10
3.2 Contractor's Project Manager .....	10
3.3 Approval of Contractor's Staff .....	10
3.4 Background and Security Investigations .....	11
3.5 Reports by Contractor.....	11
<b>4. CHANGE NOTICES AND AMENDMENTS .....</b>	<b>12</b>
4.8 Facsimile .....	13
<b>5. WORK.....</b>	<b>13</b>
5.1 Scope of Work .....	14
5.2 Standard of Services .....	16
5.3 Unapproved Work.....	16
5.4 Right To Reject.....	16
<b>6. PROJECT SCHEDULE; MILESTONES .....</b>	<b>16</b>
6.1 Project Schedule .....	16
6.2 Milestones .....	17
<b>7. TERM .....</b>	<b>17</b>
<b>8. CONTRACT SUM.....</b>	<b>17</b>
8.1 Maximum Contract Sum .....	17
8.2 County's Obligation for Future Fiscal Years.....	18
<b>9. INVOICES AND PAYMENTS .....</b>	<b>18</b>
9.1 Invoices .....	18
9.2 Transportation Charges .....	19
9.3 Sales/Use Tax .....	19
9.4 Discrepancies .....	19
9.5 Payments .....	20
9.6 Liquidated Damages.....	20
<b>10. WARRANTY .....</b>	<b>20</b>
10.1 BCP Software Warranty .....	20
10.2 Notification of Deficiencies and Corrections during the Warranty Period .....	20
10.3 Response to Deficiency Notifications .....	21
10.4 Further Warranties .....	21
10.5 Additional Warranties .....	22
10.6 Breach of Warranty Obligations.....	23
10.7 Continuous Product Support .....	23
10.8 Third Party Software .....	24
10.9 Disclaimer of Other Warranties .....	25
10.10 Warranty Pass-Through .....	25
11.1 BCP Software Ownership.....	25
11.2 License .....	26

# TABLE OF CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
11.3 Source Code Escrow .....	27
<b>12. ACCEPTANCE OF SYSTEM BY COUNTY .....</b>	<b>29</b>
12.1 General .....	29
12.2 Failed Testing .....	30
<b>14. INDEMNIFICATION AND INSURANCE.....</b>	<b>31</b>
14.1 Indemnification .....	31
14.2 Insurance .....	31
14.3 Failure to Procure and Maintain Insurance .....	34
<b>15. PROPRIETARY CONSIDERATIONS .....</b>	<b>34</b>
15.1 County Materials .....	34
15.2 Transfer to County .....	34
15.3 Copyright Notice.....	35
15.4 Contractor's Obligations.....	35
15.5 Proprietary and Confidential.....	35
15.6 No Obligation by County .....	35
15.7 Survival .....	35
<b>16. INTELLECTUAL PROPERTY INDEMNIFICATION .....</b>	<b>35</b>
<b>17. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION .....</b>	<b>37</b>
<b>18. SUBCONTRACTING .....</b>	<b>37</b>
<b>19. DISCLOSURE OF INFORMATION.....</b>	<b>39</b>
<b>20. CONFIDENTIALITY .....</b>	<b>39</b>
<b>21. TERMINATION FOR DEFAULT .....</b>	<b>41</b>
<b>22. TERMINATION FOR CONVENIENCE.....</b>	<b>42</b>
<b>23. TERMINATION FOR INSOLVENCY.....</b>	<b>43</b>
<b>24. TERMINATION FOR IMPROPER CONSIDERATION .....</b>	<b>43</b>
<b>25. TERMINATION FOR GRATUITIES .....</b>	<b>44</b>
<b>26. RECORDS AND AUDITS .....</b>	<b>44</b>
<b>27. INDEPENDENT CONTRACTOR STATUS .....</b>	<b>45</b>
<b>28. WARRANTY AGAINST CONTINGENT FEES.....</b>	<b>46</b>
<b>29. MOST FAVORED PUBLIC ENTITY.....</b>	<b>46</b>
<b>30. CONFLICT OF INTEREST.....</b>	<b>46</b>
<b>31. COUNTY'S QUALITY ASSURANCE PLAN .....</b>	<b>47</b>
<b>32. FORCE MAJEURE .....</b>	<b>47</b>
<b>33. UNLAWFUL SOLICITATION.....</b>	<b>47</b>
<b>34. RESOLICITATION OF BIDS AND PROPOSALS.....</b>	<b>47</b>
<b>35. COMPLIANCE WITH APPLICABLE LAWS .....</b>	<b>48</b>
<b>36. FAIR LABOR STANDARDS.....</b>	<b>48</b>
<b>37. NONDISCRIMINATION AND COMPLIANCE WITH CIVIL RIGHTS LAWS .....</b>	<b>48</b>
<b>38. NONDISCRIMINATION IN SERVICES .....</b>	<b>50</b>
<b>39. COMMUNITY BUSINESS ENTERPRISE PARTICIPATION .....</b>	<b>50</b>
<b>40. RESTRICTIONS ON LOBBYING.....</b>	<b>50</b>
<b>41. EMPLOYMENT ELIGIBILITY VERIFICATION.....</b>	<b>51</b>
<b>42. HIRING OF EMPLOYEES .....</b>	<b>51</b>
<b>43. CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM .....</b>	<b>52</b>
<b>44. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM .....</b>	<b>53</b>
<b>45. CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT .....</b>	<b>53</b>



## TABLE OF CONTENTS

### PARAGRAPH

### PAGE

46.	NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT	53
47.	CONTRACTOR RESPONSIBILITY AND DEBARMENT .....	53
48.	COUNTY AUDIT SETTLEMENTS .....	54
49.	FEDERAL ACCESS TO RECORDS.....	54
50.	LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS AND CERTIFICATES	55
51.	NEW TECHNOLOGY.....	55
52.	NO THIRD PARTY BENEFICIARIES .....	55
53.	GOVERNING LAW, JURISDICTION AND VENUE .....	55
54.	DISPUTE RESOLUTION PROCEDURE.....	56
55.	WAIVER.....	57
56.	CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER .....	57
57.	DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS .....	57
58.	AUTHORIZATION WARRANTY .....	58
59.	FORMS AND PROCEDURES .....	58
60.	MINIMUM AGE, LANGUAGE SKILLS AND LEGAL STATUS OF CONTRACTOR PERSONNEL .....	58
61.	VALIDITY AND SEVERABILITY .....	58
62.	NOTICES .....	59
63.	CONTRACT MONITORING AND ENFORCEMENT .....	59
64.	ARM'S LENGTH NEGOTIATIONS .....	60
65.	NON-EXCLUSIVITY.....	60
66.	ACCESS TO COUNTY FACILITIES .....	60
67.	COUNTY FACILITY OFFICE SPACE .....	60
68.	PHYSICAL ALTERATIONS.....	61
69.	CONTRACTOR'S OFFICES .....	61
70.	DELIVERY AND RISK OF LOSS.....	61
71.	STAFF PERFORMANCE WHILE UNDER THE INFLUENCE.....	61
72.	TIME IS OF THE ESSENCE .....	61
73.	ASSIGNMENT BY COUNTY .....	61
74.	CAPTIONS AND PARAGRAPH HEADINGS.....	61
75.	NOTICE OF DELAYS .....	61
76.	COUNTY POLICY REGARDING RECYCLED PAPER.....	62
77.	COMPLIANCE WITH COUNTY'S JURY SERVICE PROGRAM .....	62
78.	SURVIVAL.....	63
79.	NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION/ TERMINATION OF AGREEMENT .....	63
80.	BUSINESS ASSOCIATE PROVISIONS .....	64
81.	SAFELY SURRENDERED BABY .....	64

SIGNATURE PAGE

## TABLE OF CONTENTS

PARAGRAPH

PAGE

### EXHIBITS

- Exhibit A– Statement of Work
- Exhibit B– Schedule of Payments
- Exhibit C– Project Schedule
- Exhibit D– Contractor Employee Acknowledgement and Confidentiality Agreement
- Exhibit E– Contractor's EEO Certification
- Exhibit F– Source Code Escrow Agreement
- Exhibit G– Business Associate Agreement
- Exhibit H– County's Request for Proposals for Business Continuity Planning Software  
and Services (Incorporated by Reference)
- Exhibit I – Contractor's Proposal (Incorporated by Reference)

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the County of Los Angeles (hereinafter "County") and Strohl Systems Group, Inc., a Pennsylvania corporation (hereinafter "Contractor").

## RECITALS

WHEREAS, Contractor is engaged in the business of providing business continuity planning software as described hereunder; and

WHEREAS, in response to County's Request for Proposals for Business Continuity Planning Software and Services (Exhibit H), Contractor has submitted its proposal to County (Exhibit I) and desires to, and is prepared to, provide such software and services to County; and

WHEREAS, County desires to procure such software and services from Contractor.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, County and Contractor agree as follows:

## **1. APPLICABLE DOCUMENTS AND DEFINITIONS**

### **1.1 Interpretation**

The provisions of this document, along with Exhibits A, B, C, D, E, F and G, attached hereto, and Exhibits H and I, not attached hereto, all described in this Paragraph 1.1 below and incorporated herein by reference, collectively form and throughout and hereinafter are referred to as the "Agreement". In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule or the contents or description of any task, subtask, deliverable, goods, service or other work, or otherwise, between the body of this Agreement and the Exhibits, or between the Exhibits, and the Attachments and Schedules thereto, such conflict or inconsistency shall be resolved by giving precedence first to the body of the Agreement, and then to the Exhibits, Attachments and Schedules according to the following descending priority:

Exhibit A	Statement of Work Attachment 1 – Business Continuity Planning Functional and Technical Requirements Attachment 2 – Business Continuity Planning Software Attachment 3 – County Hardware Configuration
Exhibit B	Schedule of Payments
Exhibit C	Project Schedule
Exhibit D	Contractor Employee Acknowledgement and Confidentiality Agreement
Exhibit E	Contractor's EEO Certification
Exhibit F	Source Code Escrow Agreement
Exhibit G	Business Associate Agreement
Exhibit H	County's Request for Proposals for Business Continuity Planning Software and Services (Incorporated by Reference)
Exhibit I	Contractor's Proposal (Incorporated by Reference)

## **1.2 Entire Agreement**

The body of this Agreement, together with the Recitals and all Exhibits and the Schedules and Attachments thereto, as defined in Paragraph 1.1 (Interpretation) above, constitutes the complete and exclusive statement of understanding between the parties and supersedes all previous and contemporaneous agreements, whether written or oral, and any and all communications and negotiations between the parties relating to the subject matter of this Agreement.

## **1.3 Definitions**

The terms and phrases in this Paragraph 1.3 in quotes and with initial letter capitalized, where applicable, shall have the meanings set forth below when used in this Agreement, throughout and hereafter.

### **1.3.1 Additional Consulting**

As used herein, the term "Additional Consulting" shall mean optional post-implementation services, including, but not limited to, identification of business continuity planning best practices, which County may request and Contractor shall provide in accordance with Subtask 5.2 (Provide Additional Consulting Services (Optional)) of Exhibit A (Statement of Work).

### **1.3.2 Baseline BCP Software**

As used herein, the term "Baseline BCP Software" shall mean Baseline BIA Software and Baseline LDRPS Software. Reference to Baseline BCP Software may include Baseline BIA Software, Baseline LDRPS Software, any one or more of modules or components thereof or all Baseline BCP Software provided by Contractor under this Agreement.

### **1.3.3 Baseline BIA Software; Baseline BIA Professional Web Server Software**

As used herein, the terms "Baseline BIA Software" and "Baseline BIA Professional Web Server Software" shall mean Contractor's Business Impact Analysis (BIA) web survey and analysis software, accessible using a web browser, provided to County under this Agreement for the purpose of guiding an organization in identification and documentation of critical, time sensitive services and processes, identifying dependencies and interdependencies, assessing impacts associated with the end of critical, time sensitive services and processes and establishing viable recovery time frames and other BCP solutions in order to meet County BCP Requirements. Reference to Baseline BIA Software or Baseline BIA Professional Web Server Software may include any one or more modules or components thereof or all Baseline BIA Software or Baseline BIA Professional Web Server Software provided by Contractor under this Agreement.

### **1.3.4 Baseline LDRPS Software; Baseline LDRPS Web Server Software**

As used herein, the terms "Baseline LDRPS Software" and "Baseline LDRPS Web Server Software" shall mean Contractor's Living Disaster Recovery Planning System (LDRPS) software, accessible using a web browser, provided to County under this

Agreement for the purpose of guiding an organization in development and maintenance of business resumption, business recovery, disaster recovery and contingency plans in the event of a disaster or major disruption to County operations. Reference to Baseline LDRPS Software or Baseline LDRPS Web Server Software may include any one or more modules or components thereof or all Baseline LDRPS Software or Baseline LDRPS Web Server Software provided by Contractor under this Agreement.

#### 1.3.5 BCP

As used herein the term "BCP" shall mean business continuity planning.

#### 1.3.6 BCP Coordinator Training

As used herein, the term "BCP Coordinator Training" shall mean the training of County's end-users, as described in Task 4 (BCP Software Rollout and End-User Training) of Exhibit A (Statement of Work).

#### 1.3.7 BCP Software; Business Continuity Planning Software

As used herein, the terms "BCP Software" and "Business Continuity Planning Software" shall mean software and/or a software suite of products composed of Baseline BCP Software and Customizations, including Third-Party Software, designed to guide an organization in advanced planning and preparations to identify the impact of potential losses, formulate and implement viable recovery strategies, and develop recovery plan(s) in the event of a disaster or major disruption of County operations. The BCP Software includes, but is not limited to, BIA Software and LDRPS Software described in Attachment 2 (Business Continuity Planning Software) to Exhibit A (Statement of Work), including Customizations and Third Party Software, if any, used by Contractor to provide a BCP solution for County, and any software developed by Contractor for County in providing Additional Consulting services. Reference to BCP Software shall mean BIA Software, LDRPS Software, any one or more modules or components thereof or all BCP Software provided by Contractor under this Agreement.

#### 1.3.8 BIA Software; BIA Professional Web Server Software

As used herein, the terms "BIA Software" and "BIA Professional Web Server Software" shall mean "BIA Software" and Customizations. Reference to BIA Software or BIA Professional Web Server Software may include any one or more modules or components thereof or all BIA Software or BIA Professional Web Server Software provided by Contractor under this Agreement.

#### 1.3.9 Board of Supervisors

As used herein, the term "Board of Supervisors" shall mean County's Board of Supervisors, which is the governing body of County.

#### 1.3.10 Business Hours

As used herein, the term "business hours" shall mean 8:00 a.m. to 5:00 p.m., Pacific Time, Monday through Friday, excluding County observed holidays, unless stated otherwise.

#### 1.3.11 Concurrent Licenses

As used herein, the term "Concurrent License(s)", whether singular or plural, shall have the meaning set forth in Paragraph 11.2.3 (Scope of License) below.

#### 1.3.12 Contract Sum

As used herein, the term "Contract Sum" shall mean the total monetary amount payable by County to Contractor hereunder, as set forth in Paragraph 8.1 (Maximum Contract Sum). The Contract Sum shall not be adjusted for any costs or expenses whatsoever of Contractor.

#### 1.3.13 Contractor's Project Director

As used herein, the term "Contractor's Project Director" shall have the meaning set forth in Paragraph 3.1 (Contractor's Project Director).

#### 1.3.14 Contractor's Project Manager

As used herein, the term "Contractor's Project Manager" shall have the meaning set forth in Paragraph 3.2 (Contractor's Project Manager).

#### 1.3.15 County

As used herein, the term "County" shall mean the County of Los Angeles, California.

#### 1.3.16 County Hardware

As used herein, the term "County Hardware" shall mean the County purchased system hardware identified to conform to the recommended hardware configuration presented in Exhibit I (Contractor's Proposal) and attached as Attachment 3 (County Hardware Configuration) to Exhibit A (Statement of Work).

#### 1.3.17 County's Project Director

As used herein, the term "County's Project Director" shall have the meaning set forth in Paragraph 2.1 (County's Project Director).

#### 1.3.18 County's Project Manager

As used herein, the term "County's Project Manager" shall have the meaning set forth in Paragraph 2.2 (County's Project Manager).

#### 1.3.19 Customization(s); Customized

As used herein, the terms "Customization(s)", whether singular or plural, and "Customized" shall mean the selection of options or the customization input screens, templates and output within the BCP Software to reflect County BCP requirements.

#### 1.3.20 Day(s)

As used herein, the term "day(s)", whether singular or plural, shall mean calendar day(s) and not business day(s) unless otherwise expressly specified.

1.3.21 Deficiency; Deficiencies

As used herein, the term "Deficiency(ies)", whether singular or plural, shall mean and include defect(s) in design, development, implementation, materials, and/or workmanship; error(s); omission(s); deviation(s) from published and/or mutually agreed upon standards; deviation(s) from any of the requirement(s) or any County-approved deliverable(s) or specifications under this Agreement; and/or other problems which result in the BCP Software, not performing in strict compliance with the provisions of this Agreement, including, but not limited to, the BCP Software Requirements identified in Attachment 1 (BCP Software Functional and Technical Requirements) to Exhibit A (Statement of Work) and Documentation.

1.3.22 Department

As used herein, the term "Department" shall mean any one department of the County of Los Angeles.

1.3.23 Department BCP Coordinator

As used herein, the term "Department BCP Coordinator" shall mean a BCP coordinator from each County Department entitled to BCP Software training under Task 4 (BCP Software Rollout and End-User Training) of Exhibit A (Statement of Work).

1.3.24 Deliverable(s); deliverable(s)

As used herein, the terms "Deliverable(s)" and "deliverable(s)", whether singular or plural, shall mean items and/or services provided or to be provided by Contractor under this Agreement, including numbered Deliverable(s) in Exhibit A (Statement of Work).

1.3.25 Documentation

As used herein, the term "Documentation" shall mean any and all written and electronic materials, including, but not limited to, training course materials, customer technical manuals, customer handbooks, customer technical information, customer reference materials, customer user manuals, customer operating manuals, user manuals, quick-reference guides, FAQs, handbooks and all other instructions and reference materials relating to the capabilities, operation, installation and use of the BCP Software.

1.3.26 Effective Date

As used herein, the term "Effective Date" shall mean the date of execution of this Agreement by County's Board of Supervisors.

1.3.27 Extended Term

As used herein, the term "Extended Term" shall have the meaning set forth in Paragraph 7 (Term) below.

#### 1.3.28 Final Acceptance

As used herein, the term "Final Acceptance" shall mean County's written approval of Deliverable 4.1 (BCP Methodology Training and End-User Training for Department BCP Coordinators) of Exhibit A (Statement of Work).

#### 1.3.29 Fixed Hourly Rate

As used herein, the term "Fixed Hourly Rate" shall mean the hourly rate, specified in Section I.A (Additional Consulting Services) of Exhibit B (Schedule of Payments) and applicable to Additional Consulting services identified in Deliverable 5.2 (Additional Consulting Services) of Exhibit A (Statement of Work).

#### 1.3.30 HIPAA

As used herein, the term "HIPAA" shall mean Health Insurance Portability and Accountability Act, which mandates the safeguarding of personal and confidential medical information.

#### 1.3.31 Initial Term

As used herein, the term "Initial Term" shall have the meaning set forth in Paragraph 7 (Term).

#### 1.3.32 LDRPS Software; LDRPS Web Server Software

As used herein, the terms "LDRPS Software" and "LDRPS Web Server Software" shall mean Baseline LDRPS Software and Customizations. Reference to LDRPS Software or LDRPS Web Server Software shall include any one or more modules or components thereof or all LDRPS Software or LDRPS Web Server Software provided by Contractor under this Agreement.

#### 1.3.33 License

As used herein, the term "License" shall have the meaning set forth in Paragraph 11.2 (License).

#### 1.3.34 Maintenance

As used herein, the term "Maintenance" shall mean BCP Software maintenance services identified in Deliverable 5.1 (Maintenance and Technical Support Services) of Exhibit A (Statement of Work).

#### 1.3.35 Milestone

As used herein, the term "Milestone" shall have the meaning set forth in Paragraph 6.1 (Project Schedule).

#### 1.3.36 Milestone Chart



As used herein, the term "Milestone Chart" shall mean a chart of Milestones listing key project milestones, including deliverables, the target completion date and actual completion date, provided by Contractor in accordance with Subtask #1.1 (Deliver and Present Project Control Document (PCD)) of Exhibit A (Statement of Work).

#### 1.3.37 Production Use

As used herein, the term "production use" shall mean the actual use of the BCP Software for performance of County's applicable normal business operations.

#### 1.3.38 Project Control Document; PCD

As used herein, the terms "Project Control Document" and "PCD" shall mean a document delivered to County pursuant to Deliverable 1.1 (Project Control Document (PCD)) of Exhibit A (Statement of Work).

#### 1.3.39 Project Schedule

As used herein, the term "Project Schedule" shall mean County-approved PCD delivered by Contractor in accordance with Subtask 1.1 (Develop and Present Project Control Document (PCD)) of Exhibit A (Statement of Work), which shall be attached to the Agreement as Exhibit C (Project Schedule).

#### 1.3.40 Requirements

As used herein, the term "Requirements" shall mean any or all of the functional and technical requirements identified in Attachment 1 (BCP Software Functional and Technical Requirements) to Exhibit A (Statement of Work).

#### 1.3.41 Schedule of Payments

As used herein, the term "Schedule of Payments" shall mean prices for Deliverables, rates and fees identified in Exhibit B (Schedule of Payments) with all Schedules thereto.

#### 1.3.42 Source Code

As used herein, the term "Source Code" shall mean the source code for BCP Software developed for or licensed to County under this Agreement by Contractor, including all modifications, Updates, enhancements, corrections, patches, improvements, new releases and Customizations, if applicable, together with all Documentation and other proprietary information related to such source code.

#### 1.3.43 Source Code Escrow Agreement

As used herein, the term "Source Code Escrow Agreement" shall mean an agreement between Contractor and a third party for depositing the Source Code in accordance with Paragraph 11.3 (Source Code Escrow), identified as Exhibit F (Source Code Escrow Agreement).

#### 1.3.44 State

As used herein, the term "State" shall mean the State of California.

#### 1.3.45 Statement of Work

As used herein, the term "Statement of Work" shall mean the work provided by Contractor pursuant to this Agreement identified in terms of Tasks, Subtasks and Deliverables in Exhibit A (Statement of Work) with all Attachments thereto.

#### 1.3.46 Task(s); task(s); Subtask(s); subtask(s)

As used herein, the terms "Task(s)", "task(s)", "Subtask(s)" and "subtask(s)", whether singular or plural, shall mean one of the areas of work to be performed under this Agreement, including those identified as numbered Tasks in Exhibit A (Statement of Work).

#### 1.3.47 Technical Support

As used herein, the term "Technical Support" shall mean remote technical support services identified in Deliverable 5.1 (BCP Software Maintenance and Technical Support Services) of Exhibit A (Statement of Work).

#### 1.3.48 Third Party Software

As used herein, the term "Third Party Software" shall mean third party software, including, but not limited to, all source code, if available, object code and related Documentation, supplied by Contractor pursuant to this Agreement.

#### 1.3.49 Update(s)

As used herein, the term "Update(s)", whether singular or plural, shall have the meaning set forth in Paragraph 5.1.8 (BCP Software Maintenance and Technical Support Services) below.

#### 1.3.50 Working Day(s)

As used herein, the term "working day(s)", whether singular or plural, shall mean 8:00 a.m. to 5:00 p.m., Pacific Time, Monday through Friday, excluding County observed holidays, except that for System Hardware maintenance services, the term "working day(s)" shall mean twenty-four (24) hours per day, seven (7) days per week.

## 2. **ADMINISTRATION OF AGREEMENT – COUNTY**

### 2.1 **County's Project Director**

#### 2.1.1 County's Project Director for this Agreement shall be the following person or his/her designee:

Constance Perett  
Chief Information Office  
Office of Emergency Management  
1275 North Eastern Avenue

Los Angeles, CA 90063

- 2.1.2 County will notify Contractor in writing of any change in the name or address of County's Project Director.
- 2.1.3 County's Project Director will be responsible for ensuring that the objectives of this Agreement are met.
- 2.1.4 County's Project Director is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.
- 2.1.5 County's Project Director will have the right at all times to inspect any and all tasks, deliverables, goods, BCP Software, services or any other work provided by or on behalf of Contractor.

## **2.2 County's Project Manager**

- 2.2.1 County's Project Manager be the following person or his/her designee:

Bill Butler  
Chief Information Office  
Office of Emergency Management  
1275 North Eastern Avenue  
Los Angeles, CA 90063

- 2.2.2 County will notify Contractor in writing of any change in the name or address of County's Project Manager.
- 2.3.2 County's Project Manager will be responsible for ensuring that the technical standards and requirements of this Agreement are met.
- 2.3.3 County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.
- 2.3.4 County's Project Manager will advise County's Project Director as to Contractor's performance with respect to requirements and technical standards.
- 2.3.5 County's Project Manager will interface with Contractor's Project Manager on a regular basis.

## **2.3 County Personnel**

All County personnel assigned to this Agreement shall be under the exclusive supervision of County. Contractor understands and agrees that all such County personnel are assigned only for the convenience of County. Contractor hereby represents that its price, project schedule, and performance hereunder are based solely on the work of Contractor's personnel, except as otherwise expressly provided in this Agreement.

## **2.4 Approval of Work**

All tasks, deliverables, goods, services and other work provided by Contractor must have the written approval of County's Project Director. In no event shall County be liable or responsible for any payment prior to such written approval.

## **2.5 Approval of Invoices**

All invoices submitted by Contractor for payment must have the written approval of County's Project Director prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to or absent of such written approval.

## **3. ADMINISTRATION OF AGREEMENT – CONTRACTOR**

### **3.1 Contractor's Project Director**

- 3.1.1 Contractor's Project Director shall be the following person who shall be a full-time employee of Contractor:

Rick Colt  
631 Park Avenue  
King of Prussia, PA 19406

- 3.1.2 Contractor's Project Director shall be responsible for Contractor's performance of all its tasks and ensuring Contractor's compliance with this Agreement.

- 3.1.3 Contractor's Project Director shall teleconference with County's Project Director on a regular basis, at least monthly, to review project progress and discuss project coordination. Such meetings shall be conducted at a time and place convenient to County's Project Director.

### **3.2 Contractor's Project Manager**

- 3.2.1 Contractor's Project Manager shall be the following person who shall be a full-time employee of Contractor:

Doug Kavanagh  
631 Park Avenue  
King of Prussia, PA 19406

- 3.2.2 Contractor's Project Manager shall be responsible for Contractor's day-to-day activities as related to this Agreement and for reporting to County in the manner set forth in Paragraph 3.4 (Reports by Contractor).

- 3.2.3 Contractor's Project Manager shall interface with the County's Project Manager on a regular basis and shall be available daily on working days during working hours of 8:00 a.m. to 5:00 p.m., Pacific Time, for telephone contact and to meet with County personnel regarding the operation of this Agreement.

### **3.3 Approval of Contractor's Staff**

- 3.3.1 County has the absolute right to approve or disapprove each member or proposed member of Contractor's staff, including, but not limited to, Contractor's Project Director and Contractor's Project Manager, prior to and during their performance of any work hereunder, as well as so approving or disapproving any proposed deletions from or other changes in such staff. County's Project Director may require replacement of any member of Contractor's staff performing, or offering to perform, work hereunder, including, but not limited to, Contractor's Project Director and Contractor's Project Manager. Contractor shall provide County with a resume of each such proposed initial staff member, including, but not limited to, Contractor's Project Director and Contractor's Project Manager, and proposed substitute and an opportunity to interview such person prior to his/her performance of any work hereunder.
- 3.3.2 In addition, Contractor represents and warrants that it shall, to the maximum extent possible, take all necessary steps to ensure continuity over time of the membership of the group constituting Contractor's staff, including, but not limited to, Contractor's Project Director and Contractor's Project Manager. Contractor shall promptly fill any staff vacancy with personnel having qualifications at least equivalent to those of the staff member(s) being replaced.
- 3.3.3 In fulfillment of its responsibilities under this Agreement, Contractor shall utilize, and permit utilization of, only staff fully trained and experienced, and as appropriate, licensed or certified in the technology, trades, tasks and subtasks required by this Agreement. Contractor shall supply sufficient staff to discharge its responsibilities hereunder in a timely and efficient manner.
- 3.3.4 In the event Contractor should ever need to remove any staff from performing work under this Agreement, Contractor shall provide County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible, and shall work with County on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity.

### **3.4 Background and Security Investigations**

At any time prior to or during the term of this Agreement, County may require that all Contractor staff performing work under this Agreement undergo and pass, to the satisfaction of County, a background investigation, as a condition to beginning and continuing to work under this Agreement. County shall use its discretion in determining the method of background clearance to be used, up to and including a County performed fingerprint security clearance. The fees associated with obtaining the background information shall be at the expense of Contractor, whether or not Contractor's staff passes or fails the background clearance investigation.

### **3.5 Reports by Contractor**

In order to control expenditures and to ensure the reporting of all goods, services, and other work provided by Contractor under this Agreement, Contractor shall provide to County's Project Manager, written weekly which shall include, at a minimum, the following information:

1. Period covered by the report;
2. Overview of the reporting period;

3. Tasks, deliverables, goods, services and other work scheduled for the reporting period which were completed;
4. Tasks, deliverables, goods, services and other work scheduled for the reporting period which were not completed;
5. Tasks, deliverables, goods, services and other work not scheduled but completed in the reporting period;
6. Tasks, deliverables, goods, services and other work scheduled to be completed in the next reporting period;
7. Issues resolved;
8. Issues to be resolved;
9. Summary of project status as of reporting date;
10. Updated Milestone Chart;
11. Any other information that County may from time-to-time require.

#### **4. CHANGE NOTICES AND AMENDMENTS**

- 4.1 No representative of either County or Contractor, including those named in this Agreement, is authorized to make any changes in any of the terms, obligations or conditions of this Agreement, except through the procedures set forth in this Paragraph 4.
- 4.2 County reserves the right to change any portion of the work required under this Agreement and to any other provisions of this Agreement. All such changes shall be accomplished only as provided in this Paragraph 4.
- 4.3 For any change requested by County which does not affect the scope of work, term, Contract Sum or any term or condition included in this Agreement, a Change Notice shall be prepared and executed by County's Project Director and Contractor's Project Director.
- 4.4 Except as otherwise provided in this Agreement, for any change requested by County which affects the scope of work, term, Contract Sum or any term or condition included in this Agreement, a negotiated written Amendment to this Agreement shall be prepared and executed by each of County's Board of Supervisor's and Contractor's authorized representative.
- 4.5 Contractor shall provide a Project Schedule in accordance with Subtask #1.1 (Develop and Present Project Control Document (PCD)) of Exhibit A (Statement of Work). Notwithstanding any other provision of this Paragraph 4, changes to the Project Schedule shall be made only upon mutual agreement, in writing, by County's Project Director and Contractor's Project Director, provided that County's Project Director's and Contractor's Project Director's agreement to alter the Project Schedule shall not prejudice either party's right to claim that such alterations constitute an Amendment to this Agreement that shall be governed by the terms of Paragraph 4.4 above.
- 4.6 Notwithstanding any other provision of this Paragraph 4, to the extent that extensions of time for Contractor performance do not impact either the scope of work or Contract Sum, County's Project Director, in his sole discretion, may grant Contractor extensions of time in writing for the work listed in Exhibit C (Project Schedule).
- 4.7 Notwithstanding any other provision of this Paragraph 4 or Paragraph 22 (Termination

for Convenience), Director shall take all appropriate action to carry out any orders of County's Board of Supervisors relating to this Agreement, and, for this purpose, County's Project Director is authorized to: (i) issue written notice(s) of partial or total termination of this Agreement pursuant to Paragraph 22 (Termination for Convenience) without further action by County's Board of Supervisors or County's Purchasing Agent and/or (ii) prepare and sign Amendments to this Agreement which reduce the scope of work and the Contract Sum without further action by County's Board of Supervisors or County's Purchasing Agent.

**4.7.1** Such notices of partial or total termination shall be authorized under the following conditions:

1. Notices shall be in compliance with all applicable Federal, State, and County laws, rules, regulations, ordinances, guidelines, and directives.
2. County's Project Director shall obtain the approval of County's Office of County Counsel for any notice.
3. County's Project Director shall file a copy of all notices with the Executive Office of County's Board of Supervisors, or County's Purchasing Agent, and County's Chief Administrative Office within fifteen (15) days after execution of each notice.

**4.7.2** Such Amendments shall be authorized under the following conditions:

1. Amendments shall be in compliance with all applicable Federal, State, and County laws, rules, regulations, ordinances, guidelines, and directives.
2. County's Board of Supervisors has appropriated sufficient funds for purposes of such Amendments and this Agreement.
3. County's Project Director shall obtain the approval of County's Office of County Counsel for any Amendment.
4. County's Project Director shall file a copy of all Amendments with the Executive Office of County's Board of Supervisors, or County's Purchasing Agent, and County's Chief Administrative Office within fifteen (15) days after execution of each Amendment.

**4.8 Facsimile**

Except for the parties' initial signatures to this Agreement, which must be provided in "original" form and not by facsimile, County and Contractor hereby agree to regard facsimile representations of original signatures of authorized officials of each party, when appearing in appropriate places on the Change Notices prepared pursuant to this Paragraph 4 and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices to this Agreement, such that the parties need not follow up facsimile transmissions of such documents by subsequent (non-facsimile) transmissions of "original" versions of such documents.

**5. WORK**

## 5.1 Scope of Work

Contractor shall on a timely basis provide, complete, deliver and implement all tasks, deliverables, goods, services and other work set forth in this Agreement, including, but not limited to, BCP Software, Customizations, Maintenance, Technical Support and training (including, but not limited to, end-user BCP Coordinator Training of Department BCP Coordinators). Contractor shall perform such tasks, deliverables, goods, services and other work in accordance with Exhibit A (Statement of Work), with all Attachments thereto, at the rates and prices specified in Exhibit B (Payment Schedule), with all Schedules thereto.

### 5.1.1 BCP Software

Contractor shall provide a BCP Software License that supports County's production use of the BCP Software for the development and maintenance both departmental and enterprise business continuity plan(s), subject to the terms and conditions set forth in Paragraph 11.2 (License) below.

### 5.1.2 BCP Software Installation and Testing

Contractor shall install BCP Software at the County site as described in accordance with Subtask 2.1 (Deliver and Install Baseline BCP Software) of Exhibit A (Statement of Work) and successfully complete testing of Customized Baseline BCP Software in accordance with Subtask 3.4 (Perform Testing on Customized BCP Software) of Exhibit A (Statement of Work).

### 5.1.3 BCP Software Prototype

Contractor shall provide a prototype of BCP Software that supports County requirements as described in Deliverables 3.1.1 (Prototype of Baseline BIA Professional Web Server Software Customization) and 3.1.2 (Prototype of Baseline LDRPS Web Server Software Customization) of Exhibit A (Statement of Work).

### 5.1.4 BCP Design Document

Contractor shall provide a County-approved BCP Software Customization Design Document that will be used for final BCP Software Customization for production use as described in Deliverables 3.2.1 (Baseline BIA Professional Web Server Software Customization Design Document) and 3.2.2 (Baseline LDRPS Web Server Software Customization Design Document) of Exhibit A (Statement of Work).

### 5.1.5 BCP Software Configuration for Production Use

Contractor shall successfully customize the BCP Software for production use in accordance with Subtask 3.3 (Customize Baseline BCP Software to Meet County BCP Requirements) of Exhibit A (Statement of Work).

### 5.1.6 Deliver County Enterprise and Departmental Reports

Contractor shall successfully deliver, up to twenty (20) ad-hoc reports, which shall meet the minimum requirements identified in Subtask 3.5 (Develop County Enterprise and



Departmental Reports for Use with Customized BCP Software) of Exhibit A (Statement of Work).

5.1.7 Deliver Training for Technical System Administrators, Project Team and BCP Coordinators

Contractor shall conduct training, as provided in Deliverables 7 and 8 (Deliver County Technical System Administrator and BCP Project Team Training and Deliver Department BCP Coordinator Training) of Exhibit A (Statement of Work). Contractor shall provide County with initial and on-going classroom training in the use of each BCP Software module. Classroom training will be conducted at no cost to County in scheduled public sessions at Contractor headquarters (or at an alternate location specified by Contractor) and at a time and date specified by Contractor and mutually convenient to County. County may send as many people as it deems necessary to scheduled public classes at such Contractor locations, subject to Contractor's ability to schedule quantities of people into classes. At County's request, Contractor shall provide County with customized training tailored to County's requirements and/or provide private training at County-specified sites, as set forth in Subtask 2.3 (Provide Planning Methodology and Software Administration Training on Baseline BCP Software) of Exhibit A (Statement of Work), at charges set forth in Exhibit B (Schedule of Payments)

5.1.8 BCP Software Maintenance and Technical Support Services

Contractor shall provide annual software maintenance that includes BCP Software patches, bug fixes, enhancements, corrections, improvements, new releases, and version updates (hereinafter collectively "Update(s)"), as described in Subtask 5.1 (Provide BCP Software Maintenance and Technical Support) of Exhibit A (Statement of Work) at the rates set forth in Exhibit B (Schedule of Payments). Contractor shall update the BCP Software as necessary to make it compatible with new releases of the operating system on which the BCP Software was licensed to run. BCP Software enhancements and Updates will be provided to County on appropriate media and will include any necessary Documentation and installation procedures.

Contractor shall also provide remote technical support (hereinafter "Technical Support") services with emergency response time of no more than four (4) hours from notification by County, 24 hours a day, seven (7) days a week, 365 days a year, as further described in Subtask 5.1 (Provide BCP Software Maintenance and Technical Support) of Exhibit A (Statement of Work).

5.1.9 Additional Consulting (Optional)

Subsequent to BCP Software implementation, upon the written request of County's Project Director made at any time and from time to time during the term of this Agreement, Contractor shall provide to County Additional Consulting services at the Fixed Hourly Rate identified in Section III.A (Additional Consulting Services) of Exhibit B (Schedule of Payments), as described in Subtask 5.2 (Provide Additional Consulting Services (Optional)) of Exhibit A (Statement of Work).

5.1.10 Additional Software Licenses and Maintenance and Technical Support

If requested by County, Contractor shall provide to County additional BCP Software

Licenses and associated Maintenance and Technical Support services at the rates set forth in Section III.B (Additional Software Licenses and Maintenance and Technical Support) of Exhibit B (Schedule of Payments).

#### **5.1.11 Extended Maintenance and Technical Support**

If this Agreement is extended by County as provided in Paragraph 7 (Term) below, Contractor shall provide the Maintenance and Technical Support services to County during the Extended Term at the rates set forth in Section II (Extended Software Maintenance and Technical Support), subject to all other terms and conditions of this Agreement.

### **5.2 Standard of Services**

Contractor's services and other work required by this Agreement shall conform to high professional standards, as they exist in Contractor's profession or field of practice. If Contractor's services and other work provided under this Agreement fail to conform to such high professional standards, upon notice from County specifying the failure of performance, Contractor shall, at Contractor's sole expense, re-perform such services or other work. Contractor shall, at its own expense, correct any data in which (and to the extent that) errors have been caused by Contractor or by malfunctions of BCP Software introduced by Contractor for the purpose of this Agreement or otherwise.

### **5.3 Unapproved Work**

If Contractor provides any tasks, deliverables, goods, services or other work to County other than those specified in this Agreement, or if Contractor provides such items requiring County's prior written approval without first having obtained such written approval, the same shall be deemed to be a gratuitous effort on the part of Contractor and Contractor shall have no claim whatsoever against County therefor.

### **5.4 Right To Reject**

County reserves the right to reject any tasks, deliverables, goods, services, and/or other work not approved by County pursuant to Paragraph 2.5 (Approval of Work) or other provisions of this Agreement.

## **6. PROJECT SCHEDULE; MILESTONES**

### **6.1 Project Schedule**

Contractor shall implement the BCP Software in accordance with the Project Schedule set forth in Exhibit C (Project Schedule) following a detailed work plan identified in the Project Control Plan developed by Contractor pursuant to Subtask 1.1 (Develop and Present Project Control Document (PCD)) of Exhibit A (Statement of Work). The Project Schedule shall, at a minimum, include the following elements:

1. Deliverable Number;
2. Description;
3. Delivery Date;
4. Associated milestone (hereinafter "Milestone");

5. Any other elements required by County under this Agreement or Exhibit H (County's Request for Proposals for Business Continuity Planning Software and Services).

## **6.2 Milestones**

In the Project Schedule, Contractor shall set forth dates for completion of each Milestone. A Milestone shall be deemed completed for purposes of this Paragraph 6.2 on the earliest date that all of the tasks, deliverables, goods, services and other work required for completion of such Milestone are completed and delivered to County, provided that all of such tasks, deliverables, goods, services and other work required for completion of such Milestone are thereafter approved in writing by County pursuant to Paragraph 2.5 (Approval of Work). The determination of whether each Milestone has been so completed and so approved, and of the date upon which such Milestone was completed, shall be made by County's Project Director as soon as practicable after County is informed by Contractor that such Milestone has been completed and is given all the necessary information, data and documentation to verify such completion. A failure by Contractor to complete any Milestone by the applicable date set forth above (as such date may be modified pursuant to Paragraph 4.6) or Paragraph 75 (Notice of Delays), shall constitute a material breach of the Agreement, upon which County may terminate this Agreement for default pursuant to Paragraph 21 (Termination for Default).

## **7. TERM**

The term of this Agreement shall commence upon the Effective Date and shall expire three (3) years thereafter, unless sooner terminated or extended, in whole or in part, as provided in this Agreement (hereinafter "Initial Term"). At the end of the Initial Term, County may, at its sole option, extend this Agreement for an additional three (3) year term (hereinafter "Extended Term") by executing an Amendment in accordance with Paragraph 4 (Change Notices and Amendments); provided that if County elects not to extend prior to expiration of the Initial Term, this Agreement shall be deemed terminated at the end of the Initial Term. As used throughout this Agreement, the word "term" shall include the Initial Term and the Extended Term, to the extent County exercises its option to extend pursuant to this Paragraph 7.

## **8. CONTRACT SUM**

### **8.1 Maximum Contract Sum**

The Contract Sum under this Agreement shall be the total monetary amount payable by County to Contractor for supplying all the tasks, deliverables, goods, services and other work requested and specified under this Agreement. All work completed by Contractor must be approved in writing by County. If County does not approve work in writing, no payment shall be due Contractor for that work. The Contract Sum, including all applicable taxes, authorized by County hereunder, shall not exceed Four Hundred Thousand Dollars (\$400,000) and includes (i) Three Hundred Fifty One Eighty-Four Dollars (\$351,084) for twenty (20) concurrent user BCP Software Licenses, associated Maintenance and Technical Support services, training and other work set forth in Exhibit A (Statement of Work), and (ii) Forty-Eight Thousand Nine Hundred Sixteen Dollars (\$48,916) for Additional Consulting Services and any additional Licenses and associated Maintenance and Technical Support services which County may elect to purchase

during the Initial Term. Notwithstanding any provision of this Paragraph 8.1, Contractor shall fully perform and complete all work required of Contractor by this Agreement in exchange for the amounts to be paid to Contractor as set forth in this Agreement.

## **8.2 County's Obligation for Future Fiscal Years**

County's obligation may be limited if it is payable only and solely from funds appropriated for the purpose of this Agreement. Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until County's Board of Supervisors appropriates funds for this Agreement in County's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then County shall, at its sole discretion, either (i) terminate this Agreement as of June 30 of the last fiscal year for which funds were appropriated or (ii) reduce the work provided hereunder in accordance with the funds appropriated. County will notify Contractor in writing of any such non-appropriation of funds at its election at the earliest possible date.

## **9. INVOICES AND PAYMENTS**

### **9.1 Invoices**

- 9.1.1 Contractor shall invoice County monthly in arrears for all tasks, deliverables, goods, services and other work which are specified in Exhibit A (Statement of Work) and Exhibit B (Schedule of Payments) and which have been provided by Contractor and approved in writing by County pursuant to the terms of this Agreement.

All invoices shall be subject to County's written approval pursuant to Paragraph 2.6 (Approval of Invoices). Contractor shall prepare invoices which shall include the charges owed to Contractor by County under the terms of this Agreement. Contractor's payments shall be as provided in Exhibit B (Schedule of Payments). All invoices under this Agreement shall be submitted to the following address:

Bill Butler  
Chief Information Office  
Office of Emergency Management  
1275 North Eastern Avenue  
Los Angeles, CA 90063  
Telephone: (323) 980-2258

- 9.1.2 Contractor shall submit duplicate invoices to:

Chief Information Office  
500 West Temple Street, Room 493  
Los Angeles, California 90012  
Telephone: (213) 974-2008

- 9.1.3 Each invoice submitted by Contractor shall indicate, at a minimum:

1. The tasks, deliverables, goods, services or other work as described in Exhibit A (Statement of Work) and Exhibit B (Schedule of Payments) for which payment is

claimed.

2. The date of written approval of the tasks, deliverables, goods, services, or other work by County's Project Director.
3. Indication of any applicable withhold amounts for payments claimed or reversals thereof.
4. Indication of any applicable credits due County under the terms of this Agreement or reversals thereof.

## **9.2 Transportation Charges**

All BCP Software shall be F.O.B. Destination. The Contract Sum shown in Paragraph 8.1 (Maximum Contract Sum) includes amounts necessary for County to reimburse Contractor for all transportation and related insurance charges, if any, on BCP Software procured by County from Contractor pursuant to this Agreement. All transportation and related insurance charges shall be paid directly by Contractor to the applicable carrier. Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, any and all transportation and related insurance charges.

## **9.3 Sales/Use Tax**

The Contract Sum shown in Paragraph 8.1 (Maximum Contract Sum) shall be deemed to include all amounts necessary for County to reimburse Contractor for all applicable California and other state and local sales/use taxes on all System Components procured by County from Contractor pursuant to or otherwise due as a result of this Agreement. All California sales/use taxes shall be paid directly by Contractor to the State or other taxing authority. Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, any and all such California and other state and local sales/use taxes. Further, Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, all applicable California and other state and local sales/use tax on all other items provided by Contractor pursuant to this Agreement and shall pay such tax directly to the State or other taxing authority. In addition, Contractor shall be solely responsible for all taxes based on Contractor's income or gross revenue, or personal property taxes levied or assessed on Contractor's personal property to which County does not hold title.

## **9.4 Discrepancies**

County's Project Manager will review each invoice for any discrepancies and will, within thirty (30) days of receipt thereof, notify Contractor in writing of any discrepancies found upon such review and submit a list of disputed charges. Contractor shall review the disputed charges and send a written explanation detailing the basis for the charges within fifteen (15) days of receipt of County's notice of discrepancies and disputed charges. If County's Project Manager does not receive a written explanation for the charges within such fifteen (15) day period, Contractor shall be deemed to have waived its right to justify the original invoice amount, and County, in its sole discretion, shall determine the amount due, if any, to Contractor and pay such amount in satisfaction of the disputed invoice.

## **9.5 Payments**

Payment to Contractor shall be made in arrears on a monthly basis for work performed, provided Contractor is not in default under any provision of this Agreement. County will pay all invoice amounts to Contractor within thirty (30) days of receipt of invoices provided that the BCP Software has passed the applicable test(s) and Contractor's invoices have not been disputed in accordance with Paragraph 9.4 (Discrepancies) above.

## **9.6 Liquidated Damages**

- 9.6.1 Failure by Contractor to perform or complete the required work under this Agreement within the time frames set forth in the Project Schedule, including failure to meet the Requirements of the BCP Software identified in Attachment 1 (Business Continuity Planning Functional and Technical Requirements) to Exhibit A (Statement of Work), shall constitute a material breach of this Agreement and shall cause damages to County which are uncertain and would be impractical or extremely difficult to ascertain. In such a case, County may assess and, if assessed, Contractor promises to pay County, in the event of any such failure by Contractor to timely perform or complete the work required under this Agreement, the amounts described in this Paragraph 9.6 as liquidated and agreed damages, and not as penalties.
- 9.6.2 The liquidated damages set forth in this Paragraph 9.6 represent fair and reasonable compensation for County damages, in conformity with California Civil Code Section 1671, incurred in case of Contractor's failure to timely perform or complete the work required under this Agreement. The Director, or his/her designee, shall notify Contractor in writing of the specific instances and areas of noncompliance and/or nonperformance and the corresponding unsatisfactory performance deductions.
- 9.6.3 In any case of any such breach by Contractor, County may assess liquidated damages of \$500.00 per day for each day, or part thereof, that any of the Deficiencies continue and add said amount to the amount due from Contractor under this Agreement.
- 9.6.4 This Paragraph 9.6 shall not in any way restrict or limit County's right to any other relief resulting from Contractor's breach of this Agreement, including without limitation County's right to terminate this Agreement for default.

## **10. WARRANTY**

### **10.1 BCP Software Warranty**

Contractor hereby represents and warrants that, during the first year of the Initial Term and as long as County pays the applicable Maintenance and Technical Support fees (hereinafter cumulatively "Warranty Period"), the BCP Software, including Customizations, provided by Contractor under this Agreement shall be free from any and all Deficiencies and shall perform in accordance with the Requirements and the Documentation. During the Warranty Period, Contractor shall provide to County Maintenance and Technical Support services as described in Paragraph 5.1.8 (BCP Software Maintenance and Technical Support Services) at no cost to County.

### **10.2 Notification of Deficiencies and Corrections during the Warranty Period**

In the event of a Deficiency in the BCP Software during the Warranty Period, as determined by County's Project Director, County's Project Director will notify Contractor of the problem(s) within three (3) working days, but failure by County to notify Contractor within such time period shall not affect Contractor's warranty obligations under this Agreement. Contractor shall undertake corrective action as provided in this Paragraph 10.2 within the applicable time specified in Paragraph 10.3 (Response to Deficiency Notifications) below. If such notice to Contractor is given orally, County will also provide written confirmation of the corrective action request to Contractor within ten (10) days of such oral notification, but County's failure to do so shall not relieve Contractor of any duty hereunder. Contractor's response time shall not be stayed pending receipt of County's written confirmation.

In the event of such Deficiency during the Warranty Period, Contractor shall correct any and all Deficiencies in the BCP Software, as determined by County's Project Director, including, but not limited to, supplying County with corrective or replacement codes and/or programs and making additions, modifications and adjustments to the BCP Software as may be necessary to keep it operating in conformance with the Requirements and the Documentation.

### **10.3 Response to Deficiency Notifications**

For any Deficiency, as determined by County's Project Director, in his/her sole judgment, Contractor shall promptly commence corrective measures, within four (4) hours, and correct, within twenty-four (24) hours of receipt of notice from County, such Deficiency in the warranted BCP Software provided pursuant to this Agreement. In the event that Contractor fails to correct such Deficiency within such twenty-four (24) hour period, Contractor shall provide County with a detailed explanation of the status of the problem(s) and corrective action(s) taken as well as detailed plan(s) for resolution of the problem(s). The correction of all Deficiencies shall be at no cost to County during the Warranty Period. Contractor shall provide the services necessary to fix any programming error attributable to Contractor, which is found to exist in the BCP Software, either by replacing the BCP Software module or component or by taking appropriate corrective action. For any error, which County believes is critical to its operation and affects County's continued use of the BCP Software, Contractor shall prioritize County's needs and provide County with a correction or work-around in the time frame required by County. Contractor may elect to include minor changes in a future BCP Software release.

### **10.4 Further Warranties**

Contractor further represents, warrants, covenants and agrees that throughout the term of this Agreement:

1. Contractor shall strictly comply with the descriptions and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in Exhibit A (Statement of Work).
2. All Tasks, Subtasks and Deliverables, goods, services, and other work shall be performed in a timely and professional manner by qualified personnel.

3. All Tasks, Subtasks and Deliverables, goods, services, and other work shall be completed in accordance with this Agreement, Deliverable documentation and manufacturer's specifications.
4. All Documentation developed under this Agreement shall be uniform in appearance.
5. The BCP Software components shall be capable of interconnecting and/or interfacing with each other, and, when taken together, shall be capable of delivering all of the functionality as set forth in this Agreement (including, without limitation, the Recitals, Requirements) and the Documentation.
6. Contractor shall not cause any unplanned interruption of the operations of, or accessibility to the BCP Software through any device, method or means including, without limitation, the use of any "virus", "lockup", "time bomb", or "key lock", "worm", "back door" or "Trojan Horse" device or program, or any disabling code, which has the potential or capability of compromising the security of County's confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the BCP Software to County or any user or which could alter, destroy, or inhibit the use of the BCP Software, or the data contained therein (collectively referred to for purposes of this Paragraph 10.4.6 as "Disabling Device(s)"), which could block access to or prevent the use of the BCP Software by County or users. Contractor represents, warrants and agrees that it has not purposely placed, nor is it aware of, any Disabling Device on any component provided to County under this Agreement, nor shall Contractor knowingly permit any subsequently delivered Software to contain any Disabling Device, other than lock-offs contained on the delivered media which only prevents its use contained on such media.
7. Year 2000 Warranty  
  
As of the date of initial delivery or installation of the BCP Software licensed or sold to County pursuant to this Agreement is "Year 2000 Compliant" and stores, receives, transmits and displays date data correctly for all dates before, on, or after January 1, 2000.
8. Contractor shall provide Technical Support for current BCP Software version and the most recent prior two (2) versions for the term of this Agreement.
9. Provided that County is paying any applicable Maintenance and Technical Support fees for the BCP Software as set forth in Exhibit B (Schedule of Payments), then all Updates, including, but not limited to, updates, enhancements, improvements, new releases or versions of the BCP Software and all Documentation related thereto, shall be provided to County, at no additional cost over and above the sums otherwise payable by County under this Agreement, promptly after the creation thereof, and in no event later than thirty (30) days after County's request therefor.

## **10.5 Additional Warranties**

Contractor, in providing the BCP Software and services of Contractor described herein,



further represents, warrants, covenants and agrees that, throughout the term of this Agreement:

1. County shall be entitled to use BCP Software without interruption of use, subject only to County's obligation to make the required payments under this Agreement. Contractor represents and warrants that this Agreement is neither subject nor subordinate to any right or claim of any third party, including, without limitation, Contractor's creditors. Further, Contractor represents and warrants that during the term of this Agreement, it shall not subordinate this Agreement or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County's use of the BCP Software in accordance with this Agreement.
2. The BCP Software shall operate and conform to all specifications and shall be free from all material programming errors and material defects in workmanship and materials, as determined by County.
3. As long as County pays the applicable Maintenance and Technical Support fees, Contractor shall supply the Escrow Agent, subject to the provisions of Paragraph 11.3 (Source Code Escrow), with all Source Code for the BCP Software, including Customizations, and all Documentation and other proprietary information related to such Source Code.
4. Contractor is duly authorized to grant to County all rights, including, but not limited to, License and ownership rights, granted by this Agreement with respect to all BCP Software.

## **10.6 Breach of Warranty Obligations**

In the event Contractor fails to timely perform its obligations set forth in this Paragraph 10, then County may, after written notice to Contractor and in the event Contractor, after a reasonable time, has still failed to perform such warranty obligations, perform any required correction, replacement or other work, debit Contractor therefor at County's direct actual cost of outside labor and materials and County's burdened rates for labor (including, without limitation, salary, employee benefits and reimbursement policies). Such debit shall be made against any amounts owed by County to Contractor under this Agreement.

## **10.7 Continuous Product Support**

If Contractor assigns this Agreement (which requires the consent of County), is acquired, becomes otherwise controlled by another individual or entity, or sells, assigns, or transfers more than fifty percent (50%) of its interest in the BCP Software (collectively referred to as a "Successor Event"), and subsequent to the Successor Event, the BCP Software is not supported to at least the same level that Contractor supported the BCP Software, as determined by County's Project Director (because, for example, Contractor's assignee chooses to support other products with similar functions), County, at its sole option, may elect to transfer the License, without cost or penalty, to another similar product ("Replacement Product") within Contractor's assignee's or successor's product offering. The assignee or successor, by taking benefit (including, without limitation, acceptance of any payment under this Agreement) shall be deemed to have

ratified this Agreement. All terms and conditions of this Agreement shall continue in full force and effect for the Replacement Product. In addition, the following terms and conditions shall apply if County elects to transfer the License to a Replacement Product:

1. Any prepaid Maintenance and Technical Support for BCP Software shall transfer in full force and effect for the balance of the Replacement Product's maintenance and technical support term (or equivalent service) at no additional cost. If the prepaid moneys are greater than the Replacement's Product's maintenance and support fee for the same term, the credit balance shall be applied to future Maintenance and Technical Support fees or returned to County, at County's option;
2. Any and all modules offered separately, and needed to match the original BCP Software's level of functionality, as determined by County's Project Director, shall be supplied by Contractor's assignee or successor without additional cost or penalty, and shall not affect the calculation of any Maintenance and Technical Support fees;
3. County shall receive reasonable training for users, for purposes of learning the Replacement Product. Such training shall be provided at no cost to County or users;
3. All License terms and conditions, at a minimum, shall remain as granted herein with no additional fees imposed on County; and
4. The definition of BCP Software shall include the Replacement Product.

## **10.8 Third Party Software**

Contractor hereby represents and warrants that none of the BCP Software other than the Third Party Software identified in Attachment 2 (Business Continuity Software) in Exhibit A (Statement of Work) is owned by third parties.

Contractor represents and warrants that it has not modified and shall not modify, nor does Contractor have any need to modify, Third Party Software in order for the BCP Software to fully perform in accordance with all requirements of this Agreement. Contractor represents and warrants that it does not have any license or other right to modify Third Party Software and that Third Party Software shall be provided to County in the same unmodified form as received by Contractor from the applicable third party. Contractor represents and warrants that Third Party Software shall, together with the remainder of the BCP Software, fully satisfy all requirements of the Agreement without the need for any modification of Third-Party Software by Contractor or otherwise.

Should County be required to execute third party license agreements for Third Party Software. These third party license agreements shall be at no cost to County and shall include reasonable terms and conditions, as determined by County. To the extent that any such third party license agreement conflicts with this Agreement as it applies to County's right to use the BCP Software or modify the BCP Software, Contractor shall take all necessary action and pay all sums required to provide County with all the rights to use and modify the BCP Software afforded by this Agreement. Contractor warrants that such third party license agreements for Third Party Software shall at a minimum allow County to use the BCP Software in accordance with all of the terms of this

Agreement. Without limiting the foregoing, Contractor shall be responsible for acquiring for and delivering to County, at the sole cost of Contractor, all licenses permitting the use of the BCP Software as identified in Attachment 2 (Business Continuity Planning Software) of Exhibit A (Statement of Work).

The licenses acquired and delivered to County pursuant to this Paragraph 10.9 do not and shall not in any way limit County's BCP Software License and ownership rights provided in Paragraphs 11.1 (BCP Software Ownership) and 11.2 (License), respectively.

In the event it nonetheless becomes necessary to modify Third Party Software to satisfy any of the requirements of this Agreement, Contractor shall promptly, at no cost to County, either: (i) obtain a license from the appropriate third party which shall enable Contractor to modify such Third Party Software, and Contractor shall provide all necessary modifications, or (ii) to the extent that Contractor is unable to obtain such a license, provide an upgrade or alternative solution, which is functionally equivalent, in County's Project Director's reasonable determination, in lieu of modifying such Third Party Software. If County exercises its option to terminate this Agreement for convenience pursuant to Paragraph 22 (Termination for Convenience), the obligations of Contractor as set forth in this Paragraph 10.8 shall be null and void. Nothing herein shall require Contractor to pay for a new release, version, or revision of Third Party Software, which is not otherwise provided under Maintenance and Technical Support.

#### **10.9 Disclaimer of Other Warranties**

The warranties set forth in this Agreement are in lieu of, and Contractor hereby disclaims, all other warranties, express or implied, regarding the products and services provided hereunder, including the implied warranties of merchantability and fitness for a particular purpose.

#### **10.10 Warranty Pass-Through**

Contractor shall assign to County to the fullest extent permitted by law or by this Agreement, and shall otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any BCP Software module and/or component or any other product or service provided hereunder shall fully extend to and be enjoyed by County.

### **11. SOFTWARE OWNERSHIP AND LICENSE**

#### **11.1 BCP Software Ownership**

BCP Software provided by Contractor to County pursuant to this Agreement, other than any BCP Software developed by Contractor for the purpose of this Agreement and Third Party Software, is and shall remain the property of Contractor and shall be subject to the terms of the License granted pursuant to Paragraph 11.2 (License) below. Contractor warrants (i) that it has full title to and ownership of the BCP Software governed by this Agreement, other than Third Party Software, and all proprietary rights therein, (ii) that it has full power and authority to grant the license(s) described herein, and (iii) that none of such BCP Software, other than Third Party Software, is owned by or licensed from any other person or entity.

Notwithstanding anything to the contrary, Contractor acknowledges and agrees that all BCP Software developed by Contractor for the purpose of this Agreement shall become the property of County.

## **11.2 License**

### **11.2.1 Grant of License**

Contractor hereby grants to County a perpetual, irrevocable, non-exclusive license to use the BCP Software, including Documentation, (hereinafter "License"), subject to the conditions and restrictions of this Agreement. The License does not convey to County an ownership interest in the BCP Software.

### **11.2.2 License Term**

The License granted under this Agreement shall commence upon the earlier of the delivery of the BCP Software to County or the Effective Date, and, provided undisputed payments for such License are made as provided herein, shall continue in perpetuity and without regard to the end of the term of this Agreement.

### **11.2.3 Scope of License**

The License granted by Contractor under this Agreement provides County with the following rights:

1. To install and use the BCP Software, including, without limitation, the Third Party Software, on the number of servers for which the server licenses have been purchased, except that the use of certain Third Party Software may be subject to limitations on the number of Concurrent Users (as defined below) as set forth in Paragraph 10.9 (Third Party Software). The BCP Software products include both server software and client software. County may install and use the server software only on the number of servers for which County has purchased server Licenses, provided that concurrent use is limited to the number of concurrent user Licenses that County has purchased (hereinafter "Concurrent License(s)");
2. To modify the BCP Software, including, without limitation, Third Party Software, after such time as one of the conditions described in Paragraph 11.3.2 (Source Code Release Conditions) has occurred which would permit County to use the Source Code as provided in this Paragraph 11.2 and Paragraph 11.3 (Source Code Escrow) below;
3. To make copies of the BCP Software for backup or archival purposes; to install the BCP Software on a portable computer or on another computer located at a backup site as long as the purpose is restricted to backup; to temporarily use copies of the software at recovery sites for testing County's recovery plan and for temporary or emergency operations resulting from a disaster;
4. To use and modify the Documentation, including, but not limited to, software and user manuals in a hard copy format and, when available, electronically or on read only CD-ROM; to print, copy and distribute Contractor's on-line and printed

documentation for County's internal use; to print, copy and electronically distribute its plan information without restriction; and

5. Pursuant to Paragraph 73 (Assignment by County), to reproduce and use a reasonable number of copies of the BCP Software: (1) by County and permitted assignees pursuant to archive and backup purposes; and (2) by County for the use of permitted assignees so long as all copies of the BCP Software contain the proprietary notices appearing on the copies initially furnished to County by Contractor.

#### **11.2.4 License Restrictions**

County may not translate, de-compile, disassemble, reverse engineer, distribute, copy, time-share, sublicense, transfer or otherwise use the BCP Software except as stated in this Agreement.

#### **11.2.5 Successor Product**

If Contractor markets a successor software product which replaces the BCP Software (other than the Third Party Software) at any time when County has purchased Maintenance and Technical Support services, and if, with the consent of County in its sole discretion, Contractor ceases to provide Maintenance for such BCP Software during the term of this Agreement, then County shall be entitled to such successor product at no additional license fees, and County's license to such successor product shall be the same as County's License for such BCP Software.

### **11.3 Source Code Escrow**

#### **11.3.1 Source Code Escrow Agreement**

Contractor has deposited and, as long as County pays the applicable Maintenance and Technical Support fees, shall maintain current, at no cost to County, a copy of the Source Code for the BCP Software, including any Updates and Customizations, if applicable, and related Documentation with a nationally recognized source code escrow company, or any successor thereof (hereinafter "Escrow Agent"). A copy of the Source Code escrow agreement (hereinafter "Escrow Agreement") as of the Effective Date is attached hereto as Exhibit F (Source Code Escrow Agreement). Contractor currently maintains its Escrow Agreement with DSI Technology Escrow Services, Inc., located at 9265 Sky Park Court, Suite 202, San Diego, CA 92123. The Escrow Agent shall be responsible to perform all of its obligations under the Escrow Agreement and to act in a reasonable and prudent manner with regard to the escrow arrangement. No later than as of the Effective Date, Contractor shall register County Escrow Agent, who will promptly inform County in writing that County has been enrolled in the escrow program.

Contractor shall deposit with the Escrow Agent the Source Code for all BCP Software developed for or licensed to County, other than Third Party Software for which Contractor does not have the right to provide Source Code. Contractor shall continually update the Source Code by depositing with the Escrow Agent each Update, including, but not limited to, each new release, update, version, enhancement, modification, correction, patch, and improvement of the deposited BCP Software and any BCP Software newly licensed or developed for the purpose of this Agreement, other than

Third Party Software for which Contractor does not have the right to provide Source Code, promptly after delivery to County of the corresponding object code. County shall be entitled to receive all Updates, including modifications, updates, enhancements, corrections, patches, improvements and new releases of Source Code, provided that County is paying any applicable Maintenance and Technical Support fees in accordance with Exhibit B (Schedule of Payments). Contractor's duty to update the Source Code shall continue through the later of (i) termination or expiration of this Agreement or (ii) until County ceases obtaining Maintenance and Technical Support from Contractor.

#### 11.3.2 Source Code Release Conditions

In the event of Contractor's insolvency, the Escrow Agreement authorizes the Escrow Agent to make and release a copy of the Source Code for the entire BCP Software to County if the Escrow Agent receives a written instruction from Contractor, or its trustee in bankruptcy. Contractor, or its trustee, will have no obligation to authorize an escrow release to County, in the event this Agreement is invalid or has expired or terminated.

County may also request the Escrow Agent to release the Source Code by providing the Escrow Agent with the following:

- i. Copy of a fully executed Agreement valid and in effect at the time of County's request for release of products held by the Escrow Agent;
- ii. Written notice of its request for release of an escrowed product identifying the occurrence of one or more of the filing conditions described below (hereinafter "Release Condition(s)");
- iii. Written notice that the escrowed Source Code to be released will be used by County only as permitted under this Agreement;
- iv. Specific delivery instructions along with copying and reasonable delivery fees; and
- v. Written notice that the release of the escrowed Source Code is pursuant to 11 United States Code Section 365(n).

County may request the release of Source Code upon occurrence of either of the Release Conditions described below:

- a. Existence of any one of the following circumstances involving Contractor, which remain uncorrected for more than sixty (60) days: (1) failure to continue to do business in the ordinary course without a successor; (2) entry of an order for relief under Title 11 of the United States Code; (3) making a general assignment for the benefit of creditors; (4) appointing a general receiver or trustee in bankruptcy; or (5) action under any state insolvency or similar law for bankruptcy, reorganization or liquidation; or
- b. Existence of any one of the following circumstances involving Contractor, which remain uncorrected for more than ninety (90) days: (1) abandonment of product with no successor; (2) discontinuance of maintenance service with no successor; or (3) material failure to perform maintenance/support obligations.

Escrow Agent shall notify Contractor of County's request for escrow release via certified mail or commercial express mail service, as soon as possible but not later than within fifteen (15) days, giving Contractor an opportunity to respond with a contrary instruction. A contrary instruction is a notice from Contractor to Escrow Agent that Contractor disputes the release of Source Code. If Contractor responds with a contrary instruction within thirty (30) days of receipt of the notice from Escrow Agent, Escrow Agent will not release the Source Code but will instead notify County that there is a dispute to be resolved. If Contractor does not respond with a contrary instruction within such thirty (30) days, Escrow Agent shall release the Source Code to County. County may contest Contractor's contrary instruction to County's request for release of the Source Code pursuant to the procedures set forth in Paragraph 54 (Dispute Resolution Procedure), other than judicial proceedings as provided in Paragraph 54.8. If the dispute resolution procedures result in disagreement between Contractor's President and the Director as to whether a basis exists for any claim by County to the Source Code, and Director continues to believe that such a basis does exist, or Contractor is acting arbitrarily, the County shall have the right to seek injunctive relief.

#### **11.3.3 Possession and Use of Source Code**

If Source Code is released to County, County shall be entitled to use the Source Code for internal use only or as needed to remedy the event of release and mitigate any damages arising from such event. Such use will include, but is not limited to, County's right to perform its own Technical Support and Maintenance, alter or modify the Source Code and/or obtain the benefits sought under this Agreement. The Source Code, modified or not, shall remain subject to the same restrictions, on use, reproduction and disclosure as described in this Agreement with respect to the product licensed, provided, however, County may make such Source Code available to third parties as needed to assist it in making authorized use of the BCP Software.

### **12. ACCEPTANCE OF SYSTEM BY COUNTY**

#### **12.1 General**

- 12.1.1 Final Acceptance by County if and when County's Project Director, or his or her designee, has approved, in writing, Deliverable #4.1 (BCP Methodology Training and End-User Training for Department BCP Coordinators) of Exhibit A (Statement of Work) confirming that the BCP Software has been successfully implemented, configured, tested and trained on in accordance with Exhibit A (Statement of Work) and that Contractor has successfully completed all corrective action for all material Deficiencies, as determined in the sole judgment of County's Project Director, or his or her designee, subject to the provisions of Paragraph 54 (Dispute Resolution Procedure).
- 12.1.2 For purposes of this Paragraph 12.1, Contractor acknowledges and agrees that the determination by County's Project Director, or his or her designee, in his/her sole judgment, subject to Paragraph 54 (Dispute Resolution Procedure), with respect to whether a Deficiency is material may include, without limitation, the determination that the following are material Deficiencies: (i) any Deficiency that results in data loss, data corruption, abnormal termination of a program (i.e., a crash, quit, exit or similar phenomenon) an infinite loop, a "hang", an arithmetic or logic error, or similar manifest malfunction; (ii) any Deficiency that results in BCP Software component(s) that County's Project Director, or his or her designee, in his/her sole judgment, determines to be

important or essential, becoming inoperable or nonfunctional; (iii) any Deficiency that has a significant adverse impact on the operations to be performed using the BCP Software component(s) as determined by County's Project Director, or his or her designee, in his/her sole judgment, subject to Paragraph 54 (Dispute Resolution Procedure); (iv) any Deficiency that substantially reduces users' ability to use, or causes intermittent inoperability of, one or more material functions of the BCP Software or any of its component(s) as determined by County's Project Director, or his or her designee, in his/her sole judgment; (v) any Deficiency that results the BCP Software or any of its component(s) failing to comply with Paragraph 10.4.7 (Year 2000 Warranty); and (vi) any other Deficiency that County's Project Director, or his or her designee, in his/her sole judgment, determines to be material. Contractor further acknowledges and agrees that the determination by County's Project Director, or his or her designee, in his/her sole judgment with respect to whether a Deficiency is material may include, without limitation, the determination that it constitutes a material Deficiency for the BCP Software to have a significant number of Deficiencies, even if each individual Deficiency, when evaluated individually, may not be considered to be material.

## **12.2 Failed Testing**

If County's Project Director, or his or her designee, makes a good faith determination at any time that the BCP Software or any of its components has not successfully completed an acceptance test in accordance with Exhibit A (Statement of Work), County's Project Director, or his or her designee, shall promptly notify Contractor in writing of such failure, specifying with as much detail as possible the manner in which the BCP Software failed to pass the applicable acceptance test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the BCP Software to be ready for retesting. Contractor shall notify County's Project Director, or his or her designee, in writing when such corrections, repairs and modifications have been completed, and the applicable designated test shall begin again. If, after the designated test has been completed for a second time, County's Project Director, or his or her designee, makes a good faith determination that the BCP Software or its components again fails to pass the designated test, County's Project Director, or his or her designee, shall promptly notify Contractor in writing, specifying with as much detail as possible the manner in which BCP Software or its components failed to pass the applicable designated test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to BCP Software or its components as will permit the BCP Software or its components to be ready for retesting.

Such procedure shall continue, subject to County's rights under Paragraphs 6.2 (Milestones) in the event the Contractor fails to timely complete any milestone or timely deliver any deliverable as defined in Exhibit A (Statement of Work) until such time as County notifies Contractor in writing either: (i) of the successful completion of such Acceptance test or (ii) that County has concluded in its sole judgment, subject to the provisions of Paragraph 54 (Dispute Resolution Procedure), that satisfactory progress toward such successful completion of such Acceptance test is not being made, in which latter event, County shall have the right, in County's sole judgment, to make a determination, which shall be binding and conclusive on Contractor, that a non-curable default has occurred and to terminate this Agreement in accordance with Paragraph 21 (Termination for Default) on the basis of such non-curable default.



Such a termination by County may be, in County's sole judgment, subject to the provisions of Paragraph 54 (Dispute Resolution Procedure), either: (i) a termination with respect to BCP Software or its components; or (ii) if County believes the failure to pass the applicable designated test materially affects the functionality, performance or desirability to County of the BCP Software as a whole, the entire Agreement. In the event of a termination under this Paragraph 12.2, County shall have the right to receive from Contractor, within ten (10) days of written notice of termination, reimbursement of all payments made to Contractor by County under this Agreement for the BCP Software or its components and related Deliverables as to which the termination applies, or, if the entire Agreement is terminated, all amounts paid by County to Contractor under this Agreement. If the termination applies only BCP Software or its components, at County's sole option, any reimbursement due to County may be credited against other sums due and payable by County to Contractor. The foregoing is without prejudice to any other rights that may accrue to County or Contractor under the terms of this Agreement or by law.

### **13. SYSTEM USE**

Following installation by Contractor and prior to Acceptance by County, County shall have the right to use, in a production use mode, any completed portion of the BCP Software, without any additional cost to County where County determines that it is necessary for County operations. Such production use shall not restrict Contractor's performance under this Agreement and shall not be deemed Acceptance.

### **14. INDEMNIFICATION AND INSURANCE**

#### **14.1 Indemnification**

Contractor shall indemnify, defend, and hold harmless County, its districts administered by County, and their elected and appointed officers, employees, and agents (hereinafter in this Paragraph 14 "County") from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, in any way arising from or related to claims and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or related to Contractor, Contractor's agents', employees' or subcontractors' acts or omissions in the performance of services or provision of products hereunder, including, without limitation, any workers' compensation suits, liability, or expense, arising from or connected with services performed by any person on behalf of Contractor, Contractor's agents, employees or subcontractors pursuant to this Agreement.

#### **14.2 Insurance**

##### **14.2.1 General Insurance Requirements**

Without limiting Contractor's indemnification of County and during the term of this Agreement, Contractor shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County, and such coverage shall be provided and maintained at Contractor's own expense.

## 14.2.2 Insurance Coverage Requirements

### 14.2.2.1 Insurance Programs

1. General Liability Insurance (written on ISO policy from CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate	\$2 million
Products/Completed Operations Aggregate	\$1 million
Personal and Advertising Injury	\$1 million
Each Occurrence	\$1 million

2. Automobile Liability Insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

3. Workers' Compensation and Employers' Liability Insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Contractor is responsible. In all cases, the above insurance shall also include Employers' Liability coverage with limits of not less than the following:

Each Accident	\$1 million
Disease - Policy Limit	\$1 million
Disease - Each Employee	\$1 million

4. Property Coverage Insurance shall be endorsed naming the County of Los Angeles as loss payee, provide deductibles of no greater than 5% of the property value, and shall include:

(1) Personal Property: Automobiles and Mobile Equipment - Special form ("all risk") coverage for the actual cash value of County-owned or leased property.

(2) Real Property and All Other Personal Property - Special form ("all-risk") coverage for the full replacement value of County-owned or leased property

5. Crime Coverage Insurance with limits in amounts not less than indicated below covering against loss of money, securities, or other property referred to in this Agreement, and naming the County as loss payee:

Employee Dishonesty	\$100,000.00
Theft, Disappearance and Destruction	\$25,000.00
Computer Fraud	\$1 million

6. Professional Liability Insurance covering liability arising from any error, omission, negligent or wrongful act of Contractor, its officers or employees with limits of not less than \$1 million per occurrence and \$3 million aggregate. The coverage also shall provide an extended two (2) year reporting period commencing upon termination or cancellation of this Agreement.

#### 14.2.2.2 Evidence of Insurance

Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to: Treasurer and Tax Collector, Contracts, 500 West Temple Street, Room 464, Los Angeles, CA 90012 prior to commencing services under this Agreement. Such certificates or other evidence shall, at a minimum:

1. Specifically identify this Agreement;
2. Clearly evidence all coverages required in this Agreement;
3. Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance;
4. Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insured for all activities arising from this Agreement; and
5. Identify any deductibles or self-insured retentions for County's approval. County retains the right to require Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

#### 14.2.2.3 Insurer Financial Ratings

Insurance is to be provided by an insurance company acceptable to County with an A. M. Best rating of not less than A:VII, unless otherwise approved by County.

#### 14.2.2.4 Notification of Incidents, Claims or Suits

Contractor shall report to County:

1. Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Contractor and/or County. Such report shall be made in writing within twenty-four (24) hours of occurrence.
2. Any third party claim or lawsuit filed against Contractor arising from or related to services performed by Contractor under this Agreement.
3. Any injury to a Contractor employee which occurs on County property. This report shall be submitted on a "County Non-employee Injury Report" to County's Contract Administrator.
4. Any loss, disappearance, destruction, misuse or theft of any kind whatsoever of County property, monies or securities entrusted to Contractor under the terms of this Agreement.

#### **14.2.2.5 Insurance Coverage Requirements for Subcontractors**

All subcontractors performing work under this Agreement shall be subject to the insurance requirements of this Agreement and shall be maintained at no cost to County. Contractor shall ensure that any and all subcontractors performing services under this Agreement meet the insurance requirements of this Agreement by either:

1. Contractor providing evidence of insurance covering the activities of subcontractors, or
2. Contractor providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. County retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

### **14.3 Failure to Procure and Maintain Insurance**

Failure by Contractor to procure and maintain the required insurance or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of the agreement, upon which County may immediately terminate or suspend this Agreement. County, at its sole option, may obtain damages from Contractor resulting from such breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Contractor, deduct from the sums due to Contractor any premium costs advanced by County for such insurance.

## **15. PROPRIETARY CONSIDERATIONS**

### **15.1 County Materials**

Contractor and County agree that all materials, plans, reports, acceptance test criteria, acceptance test plans, the Project Control Document, BCP Software Configurations, all training materials, departmental procedures and processes, deliverables, data and any other information developed by County or by Contractor pursuant to and for delivery to County under this Agreement (collectively "County Materials"), and all copyrights, patent rights, trade secret rights and other proprietary rights therein shall be the sole property of County. Contractor hereby assigns and transfers to County all of Contractor's right, title, and interest in and to all County Materials developed under this Agreement, provided that notwithstanding such County ownership, Contractor may retain possession of all working papers prepared by Contractor. During and for a minimum of five (5) years subsequent to the term of this Agreement, Contractor shall retain any and all such working papers. County shall have the right to inspect any and all such working papers, make copies thereof, and use the working papers and the information contained therein.

### **15.2 Transfer to County**

Upon request of County, Contractor shall execute all documents requested by County and shall perform all other acts requested by County to assign and transfer to, and vest in, County all Contractor's right, title and interest in and to the County Materials, including, but not limited to, all copyrights, patents and trade secret rights. County shall have the right to register all copyrights and patents in the name of County of Los Angeles. Further, County shall have the right to assign, license or otherwise transfer

any and all County's right, title and interest, including, but not limited to, copyrights and patents, in and to the Materials.

### **15.3 Copyright Notice**

As requested in writing by County's Project Director, Contractor shall affix the following notice to County Materials developed under this Agreement: "©Copyright 200\_ (or such other date of first publication), County of Los Angeles. All rights reserved". Contractor shall affix such notice as directed by County.

### **15.4 Contractor's Obligations**

Contractor shall protect the security of and keep confidential all County Materials obtained or developed under this Agreement. Further, Contractor shall use whatever security measures are necessary to protect all such County Product from loss or damage by any cause, including fire and theft.

### **15.5 Proprietary and Confidential**

Any and all County Materials which are developed or were originally acquired by Contractor outside the scope of this Agreement, which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to County's Project Director as proprietary or confidential, and shall be plainly and prominently marked by Contractor as "PROPRIETARY" or "CONFIDENTIAL".

### **15.6 No Obligation by County**

Notwithstanding any other provision of this Agreement, County shall not be obligated in any way under this Agreement for:

1. Any disclosure of any materials which County is required to make under the California Public Records Act or otherwise by law; and
2. Any Contractor's proprietary and/or confidential materials not plainly and prominently marked with restrictive legends.

### **15.7 Survival**

The provisions of this Paragraph 15 shall survive the expiration or termination of this Agreement.

## **16. INTELLECTUAL PROPERTY INDEMNIFICATION**

- 16.1 Contractor represents and warrants: (i) that Contractor has the full power and authority to grant the License, ownership and all other rights granted by this Agreement to County; (ii) that no consent of any other person or entity is required by Contractor to grant such rights other than consents that have been obtained and are in effect; (iii) that County is entitled to use the BCP Software without interruption, subject only to County's obligation to make the required payments under this Agreement; (iv) that this Agreement and the

BCP Software licensed or acquired herein, are neither subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Contractor's creditors; (v) that during the term of this Agreement, Contractor shall not subordinate this Agreement or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County's use of the BCP Software (or any part thereof) in accordance with this Agreement; and (vi) that neither the performance of this Agreement by Contractor, nor the License to or ownership by, and use by, County and its users of the BCP Software in accordance with this Agreement will in any way violate any non-disclosure agreement, nor constitute any infringement or other violation of any copyright, trade secret, trademark, service mark, patent, invention, proprietary information, or other rights of any third party.

- 16.2 Contractor shall indemnify, hold harmless and defend County, its officers, employees and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees and attorney's fees, as such are incurred, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure or misappropriation, arising from or related to the BCP Software or the operation and utilization of Contractor's work under this Agreement (hereinafter collectively "Infringement Claim(s)"). Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 16 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County in writing. Notwithstanding the foregoing, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as required by law or this Agreement, County shall be entitled to reimbursement for all such costs and expenses.
- 16.3 County shall notify Contractor, in writing, as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure. Upon such notice by County, Contractor shall, at no cost to County, as remedial measures, either: (i) procure the right, by license or otherwise, for County to continue to use the BCP Software or affected BCP Software component(s), or part(s) thereof, to the same extent of County's License or ownership rights under this Agreement; or (ii) to the extent Contractor is unable to procure such right, replace or modify the BCP Software or component(s) with another software or component(s) of at least equivalent quality and performance capabilities, in County's determination, until it is determined by County that the BCP Software and all components become non-infringing, non-misappropriating and non-disclosing.
- 16.4 If Contractor fails to complete the remedial measures in Paragraph 16.3 above within forty-five (45) days of the date of the written notice from County, County shall have the right to take such remedial measures it deems reasonable to mitigate any impairment of its use of the BCP Software or its components, or damages or other costs or expenses associated with the infringement claim(s) (hereinafter "Remedial Acts"). Contractor shall indemnify County for all amounts paid and all direct and indirect costs associated with such Remedial Acts by County. Failure by Contractor to pay such amounts and costs within ten (10) days of invoice by County shall, in addition to, and cumulative to all other remedies, entitle County to immediately withhold payments due to Contractor under this Agreement up to the total of the amounts and costs paid in connection with such Remedial Acts by County.

## **17. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION**

- 17.1 Contractor shall not assign its rights and/or delegate its duties under this Agreement, whether in whole or in part, without the prior written consent of County, in its sole discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this Paragraph 17, County's consent shall require a written amendment to this Agreement, which is formally approved and executed by the parties. Any payments by County to any delegatee or assignee on any claim under this Agreement, in consequence of any such consent, shall reduce dollar for dollar any claims which Contractor may have against County and shall be subject to set-off, recoupment, or other reduction for any claims which County may have against Contractor, whether under this Agreement or otherwise.
- 17.2 Shareholders and/or partners of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of this Agreement, approval thereof by County shall be required, which approval shall not be unreasonably withheld. Consent to any such transfer may be refused if County finds that the transferee(s) is (are) lacking in experience, capability, and financial ability to perform Agreement services. This in no way limits any County's right found elsewhere in this Agreement to terminate the Agreement.

## **18. SUBCONTRACTING**

- 18.1 County has relied, in entering into this Agreement, on the reputation of and on obtaining the personal performance of Contractor itself. Consequently, no performance of this Agreement, or any portion thereof, shall be subcontracted by Contractor without the prior written approval of County as provided in this Paragraph 18. Any attempt by Contractor to subcontract any performance under this Agreement without the prior written consent of County shall be null and void and shall be deemed a material breach of this Agreement, upon which County may immediately terminate this Agreement.
- 18.2 If Contractor desires to subcontract any portion of its performance under this Agreement, Contractor shall provide to County, in writing, a request for written approval to enter into the particular subcontract, which request shall include:
1. The reason(s) for the particular subcontract;
  2. Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected;
  3. A detailed description of the work to be performed by the proposed subcontractor;
  4. A draft copy of the proposed subcontract, which shall contain, at a minimum, all standard County-required provisions set forth in this Agreement, including the minimum indemnification and insurance requirements set forth in Paragraph 14 (Indemnification and Insurance)..

5. Unless otherwise determined unnecessary by County, copies of Certificates of Insurance from the proposed subcontractor which establish that the subcontractor maintains all the programs of insurance required this Agreement.
  6. Other pertinent information and/or certifications requested by County.
- 18.3 County will review Contractor's request to subcontract and determine, in its sole discretion, whether or not to consent to such request on a case-by-case basis.
- 18.4 Contractor shall indemnify, defend and hold harmless County, its officers, employees and agents, from and against any and all claims, demands, liabilities, damages, costs and expenses, including, but not limited to, defense costs and legal, accounting or other expert consulting or professional fees in any way arising from or related to Contractor's use of any subcontractor, including, without limitation, any officers, employees or agents of any subcontractor, in the same manner as required for Contractor, its officers, employees and agents, under this Agreement.
- 18.5 Notwithstanding County's consent to any subcontracting, Contractor shall remain fully responsible for any and all performance required of it under this Agreement, including those which Contractor has determined to subcontract, including, but not limited to, the obligation to properly supervise, coordinate and perform all work required under this Agreement. All subcontracts shall be made in the name of Contractor and shall not bind nor purport to bind County. Furthermore, County approval of any subcontract shall not be construed to limit in any way Contractor's performance, obligations, or responsibilities, to County, nor shall such approval limit in any way any of County's rights or remedies contained in this Agreement. Additionally, County's approval of any subcontract shall not be construed in any way to constitute the determination of the allowableness or appropriateness of any cost or payment under this Agreement.
- 18.6 County's consent to any subcontracting shall not waive County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. Contractor shall notify its subcontractors of this County's right prior to subcontractors commencing performance under this Agreement. Contractor shall assure that any subcontractor personnel not approved in writing by County shall be immediately removed from the provision of any services under the particular subcontract or that other action is taken as requested by County. Further, in the event that County consents to any subcontracting, such consent shall be subject to County's right to terminate, in whole or in part, any subcontract at any time upon written notice to Contractor when such subcontractor is deemed by County to be in material breach of its subcontract or this Agreement. County shall not be liable or responsible in any way to Contractor, to any subcontractor, or to any officers, employees, or agents of Contractor or any subcontractor, for any claims, demands, damages, liabilities, losses, costs, or expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, in any way arising from or related to County's exercise of such right.
- 18.7 Notwithstanding County's consent to any subcontracting, Contractor shall be solely liable and responsible for any and all payments and other compensation to all subcontractors, and their officers, employees, agents, and successors in interest, for any services performed by subcontractors under this Agreement.



18.8 In the event that County consents to any subcontracting, for each subcontract entered into by Contractor, Contractor shall deliver to the County's Project Director, immediately after the effective date of the subcontract but in no event later than the date any work is performed under the subcontract:

1. A fully executed copy of each subcontract entered into by Contractor;
2. An executed Subcontractor Employee Acknowledgement and Confidentiality Agreement for each subcontractor employee approved to perform work under this Agreement; and
3. Certificates of Insurance, which establish that the subcontractor maintains all the programs of insurance required by Paragraph 14 (Indemnifications and Insurance).

18.9 In the event that County consents to any subcontracting, such consent shall apply to each particular subcontract only and shall not be, or be construed to be, a waiver of this Paragraph 18 or a blanket consent to any further subcontracting.

## **19. DISCLOSURE OF INFORMATION**

19.1 Contractor shall not disclose any details in connection with this Agreement, including but not limited to any of its terms or conditions or any circumstances which occur during the performance of this Agreement, to any party except as may be otherwise provided herein or required by law.

19.2 However, in recognizing Contractor's need to identify its services and related clients to sustain itself, County shall not inhibit Contractor from publicizing its role under this Agreement under the following conditions:

1. Contractor shall develop all publicity material in a professional manner.
2. During the term of this Agreement, Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior written consent of County's Project Director, which consent shall not be unreasonably withheld.
3. Contractor may, without the prior written consent of County, indicate in its proposals and sales that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this Paragraph 19 shall apply.

## **20. CONFIDENTIALITY**

20.1 Contractor shall maintain the confidentiality of all its records, data and information, including, but not limited to, billing and County records, in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality. Contractor shall inform all of its officers, employees, and agents performing work hereunder of the confidentiality provisions of this Agreement. Contractor shall provide to County an executed Contractor Employee Acknowledgement and Confidentiality Agreement (Exhibit D) for each of its employees performing work under this Agreement in accordance with Paragraph 27 (Independent Contractor Status).

Contractor shall indemnify, defend and hold harmless County, its officers, employees, and agents, from and against any and all loss, damage, liability, and expense, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, arising from any disclosure of such records and information by Contractor, its officers, employees, or agents, except for any disclosure authorized by this Paragraph 20.

With respect to any identifiable information concerning any patient that is obtained by Contractor or any other records and information, Contractor shall: (1) not use any such records or information for any purpose whatsoever other than carrying out the express terms of this Agreement; (2) promptly transmit to County all requests for disclosure of any such records or information; (3) not disclose, except as otherwise specifically permitted by this Agreement, any such records or information to any person or organization other than County without County's prior written authorization that the records are, or information is, releasable; and (4) at the expiration or termination of this Agreement, return all such records and information to County or maintain such records and information according to the written procedures sent to Contractor by County for this purpose.

- 20.2 The parties agree that they may disclose/share/exchange information that may include information about each other's operations, methods, plans, strategies, products, pricing, customers, employees, assets and other confidential information (hereinafter collectively "Confidential Information"). The parties agree that: (i) Confidential Information of the disclosing party will be held strictly confidential by the receiving party and the receiving party will not disclose Confidential Information, in whole or in part, to any other party except as provided herein; (ii) each party will take reasonable measures to protect the disclosing party's Confidential Information and those measures shall not be less than the measures the receiving party takes to protect its own Confidential Information; and (iii) Confidential Information will not be used, in any way, to gain or allow others to gain a competitive advantage.
- 20.3 Subject to Public Records Act, the party receiving Confidential Information agrees not to disclose, publish or disseminate Confidential Information of the disclosing party except to: (i) the receiving party's officers, employees, stockholders, districts, agents and legal counsel; or (ii) a third party, but only if the third party has a written agreement with the receiving party or with the disclosing party sufficient to require the third party to treat Confidential Information in accordance with this Agreement.
- 20.4 No obligation of confidentiality applies to Confidential Information which is: (1) already known by the receiving party without any obligation of confidentiality, (2) publicly known or becomes publicly known through no unauthorized act of the receiving party, (3) rightfully received from a third party without obligation of confidentiality, (4) approved by the disclosing party for disclosure, or (5) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the receiving party provides the disclosing party with timely prior written notice of such requirement.
- 20.4 Contractor acknowledges that a breach by Contractor of this Paragraph 20 may result in irreparable injury to County that may not be adequately compensated by monetary damages, and that, in addition to County's other rights under this Paragraph 20 and at law and in equity, County shall have the right to injunctive relief to enforce the provisions

of this Paragraph 20.

## **21. TERMINATION FOR DEFAULT**

21.1 County may, by written notice to Contractor, terminate the whole or any part of this Agreement if:

1. Contractor fails to timely provide and/or satisfactorily perform any task, subtask, deliverable, goods, service or other work within the times specified in this Agreement; or
2. Contractor fails to demonstrate a high probability of timely fulfillment of the performance requirements under this Agreement; or
3. Contractor fails to make progress as to endanger performance of this Agreement in accordance with its terms; or
4. Contractor fails to perform or comply with any other provisions of this Agreement or materially breaches this Agreement,

and does not cure such failure or fails to correct such material breach within three (3) working days of receipt of written notice from County specifying such failure or breach.

21.2 In the event that County terminates this Agreement in whole or in part as provided in this Paragraph 21 or in Paragraph 23 (Termination for Insolvency), then:

1. County shall have the right, for all users, and to the extent necessary to continue operations, to continued use of all object code versions of the BCP Software:
  - a. for the remainder of the term of the BCP Software License granted to County pursuant to Paragraph 11.2 (License), and
  - b. in perpetuity for BCP Software developed by Contractor for the purpose of this Agreement,

and County shall have the right to allow its employees, contractors and all users to utilize all such object code versions and related Documentation; and

2. Contractor shall deliver to County all Source Code for BCP Software developed by Contractor for the purpose of this Agreement; and
3. County shall have the ownership and License rights set forth in Paragraphs 11.1.2 (BCP Software), 11.2 (License) and 11.3 (Source Code Escrow) to access, modify and use the Source Code as set forth therein, including without limitation the right to modify all source and object code versions of the BCP Software after such time as one of the conditions described in Paragraph 11.3.2 (Source Code Release Conditions) has occurred which would permit County to use the Source Code; and
4. County shall have the right to procure, upon such terms and in such a manner as County may deem appropriate, goods, services, and other work, similar to those so terminated, and Contractor shall be liable to County for, and shall promptly pay to

County by cash payment, any and all excess costs incurred by County, as determined by County, to procure and furnish such similar goods, services, and other work; and

5. Contractor and County shall continue the performance of this Agreement to the extent not terminated under the provisions of Paragraph 23 (Termination for Insolvency) and/or this Paragraph 21; and
6. Contractor understands and agrees that the County has obligations that it cannot satisfy without use of BCP Software, and that a failure to satisfy such obligations could result in irreparable damage to County and the entities it serves. Therefore, Contractor agrees that in the event of any termination of this Agreement, as a result of the breach hereof by either party, or for any other reason, Contractor shall fully cooperate with County in the transition of County to a new system, toward the end that there be no interruption of County's day-to-day operations due to the unavailability of the System during such transition.

21.3 If, after County has given notice of termination under the provisions of this Paragraph 21, it is determined by County that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 22 (Termination for Convenience).

21.4 The rights and remedies of County provided in this Paragraph 21 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **22. TERMINATION FOR CONVENIENCE**

22.1 This Agreement may be terminated, in whole or in part, permanently or from time to time, when such action is deemed by County to be in its best interest. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective, which shall be no less than thirty (30) calendar days after the notice is sent. In the event County has purported to terminate this Agreement for default by notice pursuant to Paragraph 21 (Termination for Default) and it has later been determined that Contractor was not in default, no additional notice shall be required upon such termination.

22.2 After receipt of a notice of termination, and except as otherwise directed by County, Contractor shall:

1. Stop work under this Agreement on the date and to the extent specified in such notice;
2. Transfer, to the extent not previously transferred to County, title to all Peripheral Hardware pursuant to this Agreement;
3. Transfer and deliver to County all Source Code for BCP Software developed by Contractor for the purpose of this Agreement;
4. Transfer and deliver to County copies of all BCP Software and all other completed

work and work in progress; and

5. Complete performance of such part of the work as shall not have been terminated by such notice.
- 22.3 After receipt of a notice of termination, Contractor shall submit to County, in the form and with any certifications as may be prescribed by County, Contractor's termination claim and invoice. Such claim and invoice shall be submitted promptly, but no later than thirty (30) days from the effective date of termination.

## **23. TERMINATION FOR INSOLVENCY**

- 23.1 County may terminate this Agreement immediately at any time upon the occurrence of any of the following:
1. Insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay or has admitted in writing its inability to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed insolvent if it has ceased in the normal course of business to pay its debts which are disputed in good faith and which are not related to this Agreement as determined by County;
  2. The filing of a voluntary or involuntary petition to have Contractor declared bankrupt, where the involuntary petition is not dismissed within sixty (60) days;
  3. The appointment of a receiver or trustee for Contractor; or
  4. The execution by Contractor of an assignment for the benefit of creditors.
- 23.2 The rights and remedies of County provided in this Paragraph 23 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 23.3 Contractor agrees that if Contractor as a debtor-in-possession, or if a trustee in bankruptcy, rejects this Agreement, County may elect to retain its rights under this Agreement, as provided under Section 365(n) of the United States Bankruptcy Code (11 United States Code, Section 365(n)). Upon written request of County to Contractor or the trustee in bankruptcy, as applicable, Contractor or such trustee shall allow County to exercise all of its rights and benefits under this Agreement including, without limitation, such Section 365(n) (including, without limitation, the right to continued use of all source and object code versions of the BCP Software and related Documentation), and shall not interfere with the rights and benefits of County as provided therein. The foregoing shall survive the termination or expiration of this Agreement for any reason whatsoever.

## **24. TERMINATION FOR IMPROPER CONSIDERATION**

- 24.1 County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Agreement if it is found that consideration, in any form,

was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, Amendment or extension of the Agreement or the making of any determinations with respect to Contractor's performance pursuant to this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

24.2 Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County's Auditor-Controller Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

24.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

## **25. TERMINATION FOR GRATUITIES**

County may, by written notice to Contractor, terminate the right of Contractor to proceed under this Agreement upon one (1) calendar day's notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer, employee, or agent of County with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

## **26. RECORDS AND AUDITS**

26.1 Contractor shall maintain accurate and complete financial records of its activities and operation relating to this Agreement in accordance with generally accepted accounting principles. Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement, provided such access rights do not constitute an unlawful invasion of the privacy rights of any Contractor employee and would not in the reasonable opinion of Contractor subject Contractor to legal liability. Contractor agrees that County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Agreement. All such material, including, but not limited to, all financial records, time cards and other employment records, and proprietary data and information, shall be kept and maintained by Contractor and shall be made available to County during the term of this Agreement and for a period of five (5) years thereafter, unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at County's option, Contractor shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.

26.2 In the event that an audit is conducted of Contractor specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by

Contractor or otherwise, then Contractor shall file a copy of such audit report with County's Auditor-Controller within thirty (30) days of Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. County will make a reasonable effort to maintain the confidentiality of such audit report(s).

- 26.3 Failure on the part of Contractor to comply with any of the provisions of this Paragraph 26 shall constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement.

#### **26.4 Financial Statements**

Beginning one (1) year after the Effective Date and every year thereafter, until the termination of this Agreement, Contractor shall submit to County a complete set of financial statements for the twelve (12) month period. Such statements shall, at a minimum, include a Balance Sheet (Statement of Financial Position), and Income Statement (Statement of Operations). If audited statements are available, they shall be submitted to meet this requirement. In addition, Contractor shall submit a statement regarding any pending litigation since the Contractor last reported same to County. County reserves the right to request these financial statements on a more frequent basis and will so notify Contractor in writing.

### **27. INDEPENDENT CONTRACTOR STATUS**

- 27.1 This Agreement is by and between County and Contractor and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between County and Contractor. The employees and agents of one party are not and shall not be, or construed to be, the employees or agents of the other party for any purpose whatsoever. Contractor shall function as, and in all respects is, an independent contractor.
- 27.2 Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all compensation and benefits. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.
- 27.3 Contractor shall be solely liable and responsible for providing all workers' compensation insurance and benefits, liability insurance, employer taxes, compensation, and benefits to, or on behalf of, all persons performing work pursuant to this Agreement. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, payroll taxes, disability insurance or benefits, or Federal, State or local taxes, or other compensation, benefits or taxes for any personnel provided by or performing work on behalf of Contractor.
- 27.4 Notwithstanding the provisions of this Paragraph 27, the employees and agents of Contractor shall, while on the premises of County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.
- 27.5 Contractor shall provide to County an executed Contractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement (Exhibit D) for each of its

employees performing work under this Agreement. Such agreements shall be delivered to **[Insert name and address]**, on or immediately after the execution of this Agreement by County's Board of Supervisors, but in no event later than the date any such employee first performs work under this Agreement.

## **28. WARRANTY AGAINST CONTINGENT FEES**

- 28.1 Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.
- 28.2 For breach of this warranty, County shall have the right to terminate this Agreement for default and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **29. MOST FAVORED PUBLIC ENTITY**

If Contractor's prices decline, or should Contractor, at any time during the term of this Agreement, provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to County. County shall have the right, at County's expense, to utilize a County auditor or an independent auditor to verify Contractor's compliance with this Paragraph 29 by review of Contractor's books and records.

## **30. CONFLICT OF INTEREST**

- 30.1 No County employee whose position with County enables such employee to influence the award of this Agreement or any competing agreements, and no spouse or economic dependent of such employee, shall be employed in any capacity by Contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of Contractor, who may financially benefit from the performance of work hereunder, shall in any way participate in County's approval or ongoing evaluation of such work, or in any way attempt to unlawfully influence County's approval or ongoing evaluation of such work.
- 30.2 Contractor shall comply with all conflict of interest laws, ordinances and regulations now in effect or hereafter to be enacted during the term of this Agreement. Contractor warrants that it is not now aware of any facts, which do or could create a conflict of interest. If a party hereafter becomes aware of any facts, which might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.
30. Contractor, its relatives, employees and the relatives of employees shall not bid at either Public Administrator's personal or real property auctions. Further, Contractor, its relatives, employees and the relatives of employees shall not rent property that is under



the auspice of the Public Administrator.

### **31. COUNTY'S QUALITY ASSURANCE PLAN**

County, or its agent, will evaluate Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Contractor's compliance with the terms, conditions and performance standards of this Agreement. Contractor deficiencies, which County determines are severe or continuing and that may place performance of this Agreement in jeopardy, if not corrected, will be reported to the County's Board of Supervisors. The report will include improvements and/or corrective action measures taken by County and Contractor. If improvement does not occur consistent with the corrective action measures, County may, at its sole option, terminate this Agreement, in whole or in part, pursuant to Paragraph 21 (Termination for Default) or Paragraph 22 (Termination for Convenience), or impose other penalties as specified in this Agreement.

### **32. FORCE MAJEURE**

- 32.1 Except with respect to defaults of any subcontractor(s), Contractor shall not be liable for reasonable delays in the completion of work under this Agreement, if its failure to perform arises out of, and only, fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes or freight embargoes, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of Contractor.
- 32.2 If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both Contractor and subcontractor, and without any fault or negligence of either of them, Contractor shall not be liable for reasonable delays in the completion of the work, unless the work to be furnished by the subcontractor was obtainable from other sources in sufficient time to permit Contractor to meet the required schedule. Contractor agrees to use all reasonable commercial efforts to obtain such goods or services from other sources. As used in this Paragraph 32, the term "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.
- 32.3 Notwithstanding anything herein to the contrary, County shall not be liable for any additional costs incurred by Contractor, or any subcontractor hereto arising out of or resulting from *force majeure* event.

### **33. UNLAWFUL SOLICITATION**

Contractor shall inform all of its employees who provide services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with Section 6150) of California Business and Professions Code (i.e., State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in its performance hereunder to ensure that there is no violation of such provisions by its employees. Contractor shall utilize the attorney referral service of all those bar associations within Los Angeles County that have such a service.

### **34. RESOLICITATION OF BIDS AND PROPOSALS**

34.1 Contractor acknowledges that, prior to the expiration or earlier termination of this Agreement, County, in its sole discretion, may exercise its right to invite bids or request proposals for the continued provision of the goods and services delivered or contemplated under this Agreement. The County shall make the determination to resolicit bids or request proposals in accordance with applicable County policies.

34.2 Contractor acknowledges that County, in its sole discretion, may enter into an agreement for the future provision of goods and services, based upon the bids or proposals received, with a provider or providers other than Contractor. Further, Contractor acknowledges that it obtains no greater right to be selected through any future invitation for bids or request for proposals by virtue of its present status as Contractor.

### **35. COMPLIANCE WITH APPLICABLE LAWS**

35.1 Contractor's activities hereunder shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, guidelines and directives, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference. Contractor shall have up to fifteen (15) days to correct any noncompliance with County rules, regulations, ordinances, guidelines and directives following written notice from County including written copies of such applicable rules, regulations, ordinances, guidelines and/or directives.

35.2 Contractor shall indemnify, defend and hold harmless County, its officers, employees, and agents from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, arising from or related to any violation on the part of Contractor, its employees, agents or subcontractors of any such laws, rules, regulations, ordinances, guidelines or directives. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 35.2 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by in writing by County, which approval shall not be unreasonably withheld. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as required by law or this Agreement, County shall be entitled to reimbursement for all such costs and expenses.

### **36. FAIR LABOR STANDARDS**

Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend and hold harmless County, its officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by Contractor's employees for which County may be found jointly or solely liable.

### **37. NONDISCRIMINATION AND COMPLIANCE WITH CIVIL RIGHTS LAWS**

37.1 Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries and holding companies will be treated equally without regard to or because of race,

color, religion, ancestry, national origin, sex, age, physical or mental handicap, marital status, sexual orientation or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

- 37.2 Contractor shall, pursuant to Los Angeles County Code Section 4.32, certify to and comply with the provisions of the Contractor's EEO Certification (Exhibit E).
- 37.3 Contractor shall ensure that applicants and employees are treated equally during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental handicap, marital status or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 37.4 Contractor certifies and agrees that it will deal with its subcontractors, bidders or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental handicap, marital status or political affiliation, except to the extent necessary to comply with applicable Federal and State anti-discrimination laws and regulations.
- 37.5 Contractor certifies that it, its affiliates, subsidiaries and holding companies are in compliance with all Federal, State, and local laws, including, but not limited to:
1. Title VII, Civil Rights Act of 1964;
  2. Section 504, Rehabilitation Act of 1973;
  3. Age Discrimination Act of 1975;
  4. Title IX, Education Amendments of 1973, as applicable; and
  5. Title 43, Part 17, Code of Federal Regulations, Subparts A & B,

and that no person shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age, or handicap, be subject to discrimination as to any privileges or uses gained under this Agreement or under any project, program or activity supported by this Agreement.

- 37.6 Contractor shall allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 37 when so requested by County.
- 37.7 If County finds that any of the provisions of this Paragraph 37 have been violated, such violation shall, at the election of County, constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement. While County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated State or Federal anti-discrimination laws or regulations shall constitute a finding by County that Contractor has violated the anti-discrimination provisions of this Agreement.
- 37.8 The parties agree that in the event Contractor is found to have violated the anti-discrimination provisions of this Agreement, and that such discrimination was directly

associated with the performance of services provided under this Agreement, County may require, pursuant to Los Angeles County Code Section 4.32.010 (E), that Contractor pay the sum of Five Hundred Dollars (\$500) for each such violation, in lieu of terminating or suspending this Agreement, as liquidated damages are extremely difficult to ascertain or calculate precisely. In the alternative, County may elect to terminate this Agreement pursuant to Paragraph 21 (Termination for Default).

### **38. NONDISCRIMINATION IN SERVICES**

- 38.1 Contractor shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, or physical or mental handicap, in accordance with all applicable requirements of Federal and State law. For the purpose of this Paragraph 38, discrimination in the provision of services may include, but is not limited to, the following: denying any person any service or benefit or the availability of the facility, providing any service or benefit to any person which is not equivalent or is not provided in an equivalent manner or at an equivalent time to that provided to others; subjecting any person to segregation or separate treatment in any manner related to the receipt of any service; restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or any other requirements or conditions which persons must meet in order to be provided any service or benefit.
- 38.2 Contractor shall ensure that recipients of services under this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap.

### **39. COMMUNITY BUSINESS ENTERPRISE PARTICIPATION**

- 39.1 County encourages the participation of Community Business Enterprise(s) ("CBE(s)") in its agreements and has established a goal of twenty-five percent (25%) of the maximum monetary amount payable under each agreement, which all contractors must aspire to meet. Contractor acknowledges County's desire to meet the CBE participation goal and agrees to aspire to meet such goal in performing the work under this Agreement. Contractor shall also encourage its subcontractors to take affirmative steps to hire CBEs for performing the work under the subcontracts.
- 39.2 For the purposes of this Agreement, "CBE" shall be construed to mean Minority / Women / Disadvantaged / Disabled Veteran owned Business Enterprise ("M/W/D/DVBE").

### **40. RESTRICTIONS ON LOBBYING**

#### **40.1 Federal Funds Projects**

If any Federal funds are to be used to pay portion for any of Contractor's work under this Agreement, Contractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public law 101-121 (31 United States Code Section 1352) and any implementing regulations, and shall ensure that each of its subcontractors receiving funds provided under this Agreement also fully complies with all such certification and disclosure requirements.

## **40.2 County Projects**

Contractor, and each County lobbyist or County lobbying firm, as defined in Los Angeles County Code Section 2.160.010, retained by Contractor, shall fully comply with County's Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Contractor or any County lobbyist or County lobbying firm retained by Contractor to fully comply with County Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which County may immediately terminate or suspend this Agreement.

## **41. EMPLOYMENT ELIGIBILITY VERIFICATION**

- 41.1 Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding employment of aliens and others and that all its employees performing services under this Agreement meet the citizenship or alien status requirements contained in Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). In the event Contractor fails to comply with the provisions of this Paragraph 41, County may, in its sole discretion, terminate this Agreement for default.
- 41.2 Contractor shall obtain from all employees performing under this Agreement, prior to commencing any work hereunder, all verifications and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Contractor shall retain such documentation for the period prescribed by law.
- 41.3 Contractor shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, arising out of or in connection with any employer sanctions and any other liability which may be assessed against Contractor or County in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 41 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County in writing, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, County shall have the right to participate in any such defense, at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as required by law or this Agreement, County shall be entitled to reimbursement for all such costs and expenses.

## **42. HIRING OF EMPLOYEES**

### **42.1 Consideration of Hiring County Employees Targeted for Layoff/On Re-Employment List**

Should Contractor require additional or replacement personnel after the Effective Date to perform the work set forth herein, Contractor shall give first consideration for such employment openings to qualified permanent County employees who are targeted for layoff or qualified former County employees who are on a re-employment list during the

term of this Agreement.

#### **42.2 Consideration of GAIN/GROW Program Participants for Employment**

Should Contractor require additional or replacement personnel after the Effective Date, Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program and General Relief Opportunity for Work (GROW) Program who meet Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that Contractor will interview qualified candidates. County will refer GAIN/GROW participants by job category to Contractor.

In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

#### **42.3 Prohibition Against Inducement or Persuasion**

42.3.1 Contractor and County agree that, during the term of this Agreement and for a period of one (1) year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party.

42.3.2 Notwithstanding the foregoing, County shall be entitled to make offers of employment to employees of Contractor necessary or desirable to perform work described in this Agreement, in the event that: (i) County has the right to terminate this Agreement pursuant to Paragraph 23 (Termination for Insolvency); (ii) this Agreement is terminated by County due to Contractor's default pursuant to Paragraph 21 (Termination for Default); (iii) Contractor and County have followed the dispute resolution procedure set forth in Paragraph 54 (Dispute Resolution Procedure), and have otherwise exhausted other administrative remedies, if any, as determined by County; or (iv) Contractor either announces the withdrawal of support of, or otherwise no longer provides services County deems essential to, the ongoing support of the System.

42.3.3 The prohibition in this Paragraph 42.3 shall not apply to any hiring action initiated through a public announcement.

#### **43. CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

43.1 Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through County agreements are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

43.2 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor's duty under this Agreement to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653(a)) and California Unemployment Insurance Code Section 1088.5, and shall, implement all lawfully served Wage and Earnings Withholding Orders or County's Child Support Services Department Notices of Wage and Earnings Assignment for Child or

Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**44. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 43 (Contractor's Warranty of Adherence to County's Child Support Compliance Program) shall constitute a default by Contractor under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within ninety (90) days of notice by County's Child Support Services Department shall be grounds upon which the Auditor-Controller or County's Board of Supervisors may terminate this Agreement pursuant to Paragraph 21 (Termination for Default).

**45. CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT**

Contractor acknowledges that County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Contractor understands that it is County's policy to encourage all County contractors to voluntarily post County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at Contractor's place of business. County's Child Support Services Department will supply Contractor with the poster to be used.

**46. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

**47. CONTRACTOR RESPONSIBILITY AND DEBARMENT**

- 47.1 A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is County's policy to conduct business only with responsible contractors.
- 47.2 Contractor is hereby notified that, in accordance with Chapter 2.202 of the Los Angeles Code, if County acquires information concerning the performance of Contractor on this Agreement or other agreements which indicates that Contractor is not responsible, County may, in addition to other remedies provided in this Agreement, debar Contractor from bidding on County agreements for a specified period of time not to exceed three (3) years and terminate any or all existing agreements Contractor may have with County.
- 47.3 County may debar Contractor if County's Board of Supervisors finds, in its discretion, that Contractor has done any of the following: (i) violated any term of an agreement with County; (ii) committed any act or omission which negatively reflects on Contractor's quality, fitness or capacity to perform an agreement with County or any other public

entity, or engaged in a pattern or practice which negatively reflects on same; (iii) committed an act or offense which indicates a lack of business integrity or business honesty; or (iv) made or submitted a false claim against County or any other public entity.

- 47.4 If there is evidence that Contractor may be subject to debarment, County's Project Director, or his/her designee, will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before County's Contractor Hearing Board.
- 47.5 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board will prepare a proposed decision, which shall contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. If Contractor fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, Contractor may be deemed to have waived all rights of appeal.
- 47.6 A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to County's Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- 47.7 The terms and procedures of this Paragraph 47 shall also apply to subcontractors, consultants and partners of Contractor performing work under this Agreement.

#### **48. COUNTY AUDIT SETTLEMENTS**

If, at any time during or after the term of this Agreement, or at any time after the expiration of termination thereof, representatives of County conduct an audit of Contractor regarding the work performed under this Agreement, and if such audit finds that County's dollar liability for such work is less than payments made by County to Contractor, then the difference, together with County's reasonable costs of audit, shall, at County's sole discretion, either be: (i) repaid by Contractor to County by cash payment upon demand; or (ii) deducted from any amounts due to Contractor from County, whether under this Agreement or otherwise. If such audit finds that County's dollar liability for such work is more than payments made by County to Contractor, then the difference shall be repaid by County to Contractor, but in no event shall County's payments to Contractor exceed the Contract Sum identified in Paragraph 8 (Contract Sum).

#### **49. FEDERAL ACCESS TO RECORDS**

If, and to the extent that, Section 1861(v)(1)(i) of the Social Security Act (42 United States Code Section 1395x(v)(1)(i)) is applicable, Contractor agrees that for a period of five (5) years following the furnishing of services under this Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States or to any of their authorized representatives, the agreements, books, documents and records of Contractor which are necessary to verify the nature and extent of the



costs of services provided hereunder. Furthermore, if Contractor carries out any of the services provided hereunder through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents, and records of the subcontractor.

**50. LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS AND CERTIFICATES**

Contractor shall obtain and maintain in effect during the term of this Agreement all licenses, permits, registrations, accreditations and certificates required by all Federal, State, and local laws, ordinances, rules, regulations, guidelines and directives, which are applicable to Contractor's services under this Agreement. Contractor shall further ensure that all of its officers, employees, agents and subcontractors who perform services hereunder, shall obtain and maintain in effect during the term of this Agreement all licenses, permits, registrations, accreditations and certificates which are applicable to their performance hereunder. A copy of each such license, permit, registration, accreditation and certificate required by all applicable Federal, State, and local laws, ordinances, rules, regulations, guidelines and directives shall be provided, in duplicate, to Treasurer and Tax Collector, Attention Manager, Contracts Section, 500 West Temple Street, Room 464, Los Angeles, California 90012.

**51. NEW TECHNOLOGY**

Contractor and County acknowledge the probability that the technology that compromises the BCP Software will change and improve during the term of this Agreement. County desires the flexibility to incorporate into the System any new technologies as they may become available. Accordingly, Contractor's Project Manager shall, promptly upon discovery and on a continuing basis, apprise County's Contract Administrator and County's Project Manager of all new technologies, methodologies and techniques which Contractor considers to be applicable to the BCP Software. Specifically, upon County's request, Contractor shall provide, in writing, a description of such new technologies, methodologies and techniques, indicating the advantages and disadvantages of incorporating same into the BCP Software, and provide an estimate of the impact such incorporation will have on the performance, scheduling and price of the BCP Software. County, at its sole discretion, may request that this Agreement be amended to incorporate the new technologies, methodologies and techniques into the BCP Software pursuant to the provisions of Paragraph 4 (Change Notices and Amendments).

**52. NO THIRD PARTY BENEFICIARIES**

Notwithstanding any other provision of this Agreement, Contractor and County do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement, except that this provision shall not be construed to diminish Contractor's indemnification obligations hereunder.

**53. GOVERNING LAW, JURISDICTION AND VENUE**

This Agreement shall be governed by, and construed in accordance with, the laws of the

State of California applicable to agreements made and to be performed within the State. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California. As with respect to claims that are subject to exclusive Federal subject matter jurisdiction, Contractor agrees and consents to the exclusive jurisdiction of the Federal District Court of the Central District of California.

#### **54. DISPUTE RESOLUTION PROCEDURE**

54.1 Contractor and County agree to act immediately to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Paragraph 54. Time is of the essence in the resolution of disputes.

54.2 Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which County, in its sole discretion, determines should be delayed as a result of such dispute.

If Contractor fails to continue without delay its performance hereunder which County, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by Contractor or County as a result of Contractor's failure to continue to so perform shall be borne by Contractor, and Contractor shall make no claim whatsoever against County for such costs. Contractor shall promptly reimburse County for such County costs, as determined by County, or County may deduct all such additional costs from any amounts due to Contractor from County.

If County fails to continue without delay to perform its responsibilities under this Agreement which County, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs incurred by Contractor or County as a result of County's failure to continue to so perform shall be borne by County, and County shall make no claim whatsoever against Contractor for such costs. County shall promptly reimburse Contractor for all such additional Contractor costs subject to the approval of such costs by County.

54.3 In the event of any dispute between the parties with respect to this Agreement, Contractor and County shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.

54.4 In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute, then the matter shall be immediately submitted to the parties' respective Project Directors (with a copy to County's Contract Administrator) for further consideration and discussion to attempt to resolve the dispute.

54.5 In the event that the Project Directors are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute, then the matter shall be immediately submitted to Contractor's President and Director. These persons shall have ten (10) days to attempt to resolve the dispute.

- 54.6 In the event that at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Agreement and/or its rights and remedies as provided by law.
- 54.7 All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all three (3) levels described in this Paragraph 54, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face-to-face meeting or by telephone, or in writing by exchange of correspondence.
- 54.8 Notwithstanding any other provision of this Agreement, County's right to terminate this Agreement pursuant to Paragraph 23 (Termination for Insolvency), Paragraph 21 (Termination for Default), Paragraph 24 (Termination for Improper Consideration), Paragraph 22 (Termination for Convenience), or any other termination provision hereunder, and County's right to seek injunctive relief to enforce the provisions of Paragraphs 15 (Proprietary Considerations) and 20 (Confidentiality), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of County's rights, and shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims after any such termination or such injunctive relief has been obtained.

## **55. WAIVER**

No breach by Contractor of any provision of this Agreement can be waived unless done in writing. No waiver by County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **56. CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER**

Contractor recognizes that County provides services essential to the residents of the communities it serves, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event. Notwithstanding any other provision of this Agreement, full performance by Contractor during any riot, insurrection, civil unrest, natural disaster or similar event is not excused if such performance remains physically possible without related danger to Contractor's or subcontractors' employees and suppliers. During any such event in which the health or safety of any of Contractor's staff members would be endangered by performing their services on-site, such staff members may perform any or all of their services remotely. Failure to comply with this requirement shall be considered a material breach of this Agreement by Contractor, for which County may immediately terminate this Agreement.

## **57. DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

- 57.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware

of such damage, but in no event later than thirty (30) days after the occurrence.

- 57.2 If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand or, without limitation of all County's other rights and remedies provided by law or under this Agreement, County may deduct such costs from any amounts due Contractor from County under this Agreement.

## **58. AUTHORIZATION WARRANTY**

Contractor represents and warrants that the person executing this Agreement or any Amendment thereto pursuant to Paragraph 4 (Change Notices and Amendments) for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition and obligation of this Agreement, and that all requirements of Contractor have been fulfilled to provide such actual authority.

## **59. FORMS AND PROCEDURES**

All forms and procedures used by Contractor in implementation of the provisions of this Agreement shall be subject to review and approval by County prior to use by Contractor. Such forms and procedures shall not conflict in any way with this Agreement and shall incorporate the terms and conditions of this Agreement. In the event of any conflict between such forms and procedures and this Agreement, the provisions of this Agreement shall prevail.

## **60. MINIMUM AGE, LANGUAGE SKILLS AND LEGAL STATUS OF CONTRACTOR PERSONNEL**

Contractor cannot assign employees under the age of eighteen (18) to perform work under this Agreement. All of Contractor's employees working at County facilities must be able to communicate in English. Contractor's employees must be United States citizens or legally present and permitted to work in the United States.

## **61. VALIDITY AND SEVERABILITY**

### **61.1 Validity**

The invalidity, unenforceability or illegality of any provision of this Agreement shall not render the other provisions hereof invalid, unenforceable or illegal, unless the essential purposes of this Agreement shall be materially impaired thereby.

### **61.2 Severability**

In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, if practicable, and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid in its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. If any provision of this Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may

be necessary to make it valid and effective.

## **62. NOTICES**

62.1 All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (i) by hand with signed receipt; (ii) by first-class registered or certified mail, postage prepaid; or (iii) by facsimile or electronic mail transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, or on the date of facsimile or electronic mail transmission if followed by timely confirmation mailing. Addresses may be changed by either party by giving ten (10) days prior written notice thereof to the other party.

62.2 Director shall have the authority to issue all notices or demands which are required or permitted to be issued by County under this Agreement.

### **62.3 To County**

Chief Information Office  
500 West Temple Street, Room 493  
Los Angeles, California 90012  
Attention: Jon W. Fullinwider  
Facsimile: (213) 633-4733  
Email: [TBD]

### **62.4 To Contractor**

Strohl Systems Group, Inc.  
631 Park Avenue  
King of Prussia, PA 19406  
Attention: Director, Legal Affairs  
Facsimile: (610) 768-4135  
Email: [ssignore@strohlssytems.com](mailto:ssignore@strohlssytems.com)

62.5 Each party may change the names of the people designated to receive notices pursuant to this Paragraph 62 by giving written notice of the change to the other party, subject to County's right of approval in accordance with Paragraph 3.3 (Approval of Contractor's Staff).

## **63. CONTRACT MONITORING AND ENFORCEMENT**

63.1 The County shall be responsible for the enforcement of this Agreement on behalf of County and shall be assisted therein by those officers and employees of County having duties in connection with the administration thereof. The County hereby reserves the right to:

1. Assign such personnel as are needed to serve as Contract Monitor(s) in order to inspect and review Contractor's performance of, and compliance with, all contractual services, duties, obligations, responsibilities, administrative procedures

and staffing as set forth in this Agreement; and,

2. Require Contractor to provide such written documentation and/or regular reports, as the County deems necessary, to verify and review Contractor's performance under this Agreement.

63.2 Contractor hereby agrees to cooperate with the County and any appropriate State or Federal representative, in the review and monitoring of Contractor's services, records and procedures at any reasonable time.

63.3 At the request of the County, Contractor's representatives shall attend meetings and/or training sessions, as determined by the County, for the purpose(s) of orientation, information sharing, Agreement revision, and/or description of County policies and procedural standards.

63.4 In the event County commences legal proceedings for the enforcement of this Agreement, Contractor does hereby agree to pay any sum which may be awarded to County by the Court for attorneys' fees and costs incurred in the action brought thereon.

#### **64. ARM'S LENGTH NEGOTIATIONS**

This Agreement is the product of arm's length negotiations between Contractor and County. Consequently, each party has had the opportunity to receive advice from independent counsel of its own choosing, by Stephen R. Signore, Jr., in the case of Contractor, and Lloyd W. Pellman, County Counsel, by Victoria Mansourian, Senior Associate County Counsel, in the case of County. This Agreement is to be interpreted fairly as between the parties and not strictly construed as against either party.

#### **65. NON-EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Agreement shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

#### **66. ACCESS TO COUNTY FACILITIES**

Contractor, its employees and agents, will be granted access to County facilities, subject to Contractor's prior notification to County's Project Director, for the purpose of executing Contractor's obligations hereunder. Access to County facilities shall be restricted to normal business hours, 8:00 a.m. until 5:00 p.m., Pacific Time, Monday through Friday, County observed holidays excepted. Access to County facilities outside of normal business hours must be approved in writing in advance by County's Project Director, which approval shall not be unreasonably withheld. Contractor shall have no tenancy, or any other property or other rights, in County facilities. While present at County facilities, Contractor's personnel shall be accompanied by County personnel at all times, unless this requirement is waived in writing prior to such event by County's Project Director.

#### **67. COUNTY FACILITY OFFICE SPACE**

In order for Contractor to perform services hereunder and only for the performance of such services, County may elect, subject to County's standard administrative and

security requirements, to provide Contractor with office space and equipment, as determined at the discretion of the County's Project Director, at County facilities, on a non-exclusive use basis. County will also provide Contractor with reasonable telephone service in such office space for use only for purposes of this Agreement. County disclaims any and all responsibility for the loss, theft or damage of any property or material left at such County office space by Contractor.

**68. PHYSICAL ALTERATIONS**

Contractor shall not in any way physically alter or improve any County facility without the prior written approval of Director, County's Project Director, County's Project Manager and County's Director of Internal Services Department, in their discretion.

**69. CONTRACTOR'S OFFICES**

Contractor's business offices are located at 631 Park Avenue, King of Prussia, PA 19406. Contractor shall notify in writing Chief Information Office, 500 West Temple Street, Room 493, Los Angeles, California 90012, Attention: **{To Be Inserted}**, of any change in its business address at least ten (10) working days prior to the effective date thereof.

**70. DELIVERY AND RISK OF LOSS**

Contractor shall bear the full risk of loss due to total or partial destruction of the BCP Software loaded on CDs or other computer media and/or Peripheral Hardware until such items are delivered to and accepted in writing by County.

**71. STAFF PERFORMANCE WHILE UNDER THE INFLUENCE**

Contractor shall use reasonable efforts to ensure that no employee of Contractor shall perform services hereunder while under the influence of any alcoholic beverage, medication, narcotic or other substance, which might impair his/her physical or mental performance.

**72. TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement.

**73. ASSIGNMENT BY COUNTY**

This Agreement may be assigned in whole or in part by County, without the further consent of Contractor, to a party which is not a competitor of Contractor and which agrees in writing to perform County's obligations under this Agreement.

**74. CAPTIONS AND PARAGRAPH HEADINGS**

Captions and paragraph headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in construing this Agreement.

**75. NOTICE OF DELAYS**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall immediately, but no later than within one (1) business day, give to the other party notice thereof, with all relevant information with respect to such actual or potential delay, by telephoning the appropriate personnel of that party, followed by a written notification within one (1) business day.

## **76. COUNTY POLICY REGARDING RECYCLED PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, Contractor agrees to use recycled-content paper to the maximum extent possible for the purpose of this Agreement.

## **77. COMPLIANCE WITH COUNTY'S JURY SERVICE PROGRAM**

### **77.1 Jury Service Program**

This Agreement is subject to the provisions of County's ordinance entitled Contractor Employee Jury Service Program (hereinafter "Jury Service Program" or "Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code (hereinafter "County Code").

### **77.2 Written Employee Jury Service Policy**

77.2.1 Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees (as defined in Paragraph 77.2.2 below) shall receive from Contractor, on an annual basis, no less than five (5) days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with Contractor or that Contractor deducts from the Employee's regular pay the fees received for jury service.

77.2.2 For purposes of this Paragraph 77, "Contractor" means a person, partnership, corporation or other entity which has an agreement with County or a subcontract with Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County agreements or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of ninety (90) days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for County under this Agreement, the subcontractor shall also be subject to the provisions of this Paragraph 77. The provisions of this Paragraph 77 shall be inserted into any such subcontract and a copy of the Jury Service Program shall be attached to the agreement.

77.2.3 If Contractor is not required to comply with the Jury Service Program when the Agreement commences, Contractor shall have a continuing obligation to review the



applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during this Agreement and at its sole discretion, that Contractor demonstrate to County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.

77.2.4 Contractor's violation of this Paragraph 77 of this Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate this Agreement with Contractor and/or bar Contractor from the award of future County agreements for a period of time consistent with the seriousness of the breach.

## **78. SURVIVAL**

The provisions in the following Paragraphs shall survive the expiration or termination of this Agreement for any reason:

- 5.3 Unapproved Work
- 10. Warranty
- 11. Software Ownership and License
- 14. Indemnification and Insurance
- 15. Proprietary Considerations
- 16. Intellectual Property Indemnification
- 19. Disclosure of Information
- 20. Confidentiality
- 21. Termination for Default
- 22. Termination for Convenience
- 23. Termination for Insolvency
- 24. Termination for Improper Consideration
- 25. Termination for Gratuities
- 26. Records and Audits
- 35. Compliance with Applicable Laws
- 36. Fair Labor Standards
- 41. Employment Eligibility Verification
- 42. Hiring of Employees
- 48. County Audit Settlements
- 49. Federal Access to Records
- 52. No Third Party Beneficiaries
- 53. Governing Law, Jurisdiction and Venue
- 61. Validity and Severability

## **79. NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION/TERMINATION OF AGREEMENT**

CONTRACTOR shall have no claim against COUNTY for payment of any money or reimbursement, of any kind whatsoever, for any service provided by CONTRACTOR after the expiration or other termination of this Contract. Should CONTRACTOR receive

any such payment, it shall immediately notify COUNTY and shall immediately repay all such funds to COUNTY. Payment by COUNTY for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from CONTRACTOR. This provision shall survive the expiration or other termination of this Contract.

## **80. BUSINESS ASSOCIATE PROVISIONS**

Contractor shall comply with provisions mandated by HIPAA as a Business Associate of County. Please refer to Exhibit G (Business Associate Agreement).

## **81. SAFELY SURRENDERED BABY**

- 81.1 Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrender Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at [www.babysafela.org/](http://www.babysafela.org/) for printing purposes.
- 81.2 Contractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor understands that it is County's policy to encourage all County contractors to voluntarily post County's "Safely Surrendered Baby Law" poster in a prominent position at Contractor's place of business. Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. County's Department of Children and Family Services will supply Contractor with the poster to be used.

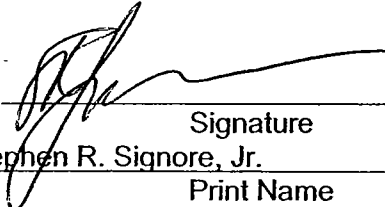
## BUSINESS CONTINUITY PLANNING SOFTWARE AND SERVICES AGREEMENT

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be subscribed by its Chairman and the seal of such Board to be affixed and attested by the Executive Officer thereof, and Contractor has caused this Agreement to be subscribed in its behalf by its duly authorized officer, the day, month and year first above written.

### COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Chairman, Board of Supervisors

### CONTRACTOR

By  \_\_\_\_\_  
Signature  
Stephen R. Signore, Jr.  
Print Name

Title Director, Legal and Admin Affairs

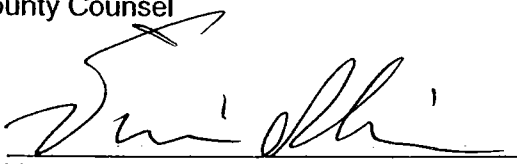
(AFFIX CORPORATE SEAL HERE)

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk  
Of the Board of Supervisors

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
LLOYD W. PELLMAN  
County Counsel

By  \_\_\_\_\_  
Victoria Mansourian  
Senior Associate County Counsel



**EXHIBIT A**

**ATTACHMENT 1  
FUNCTIONAL AND TECHNICAL REQUIREMENTS**

## TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1.0 BUSINESS CONTINUITY PLANNING (BCP) METHODOLOGY.....	1
2.0 FUNCTIONAL REQUIREMENTS.....	2
3.0 TECHNICAL REQUIREMENTS .....	8

# EXHIBIT A

## ATTACHMENT 1

### FUNCTIONAL AND TECHNICAL REQUIREMENTS

The BCP Software provided by Contractor under this Agreement shall meet the functional and technical requirements set forth in this Attachment 1 to Exhibit A (Statement of Work).

#### 1.0 BUSINESS CONTINUITY PLANNING (BCP) METHODOLOGY

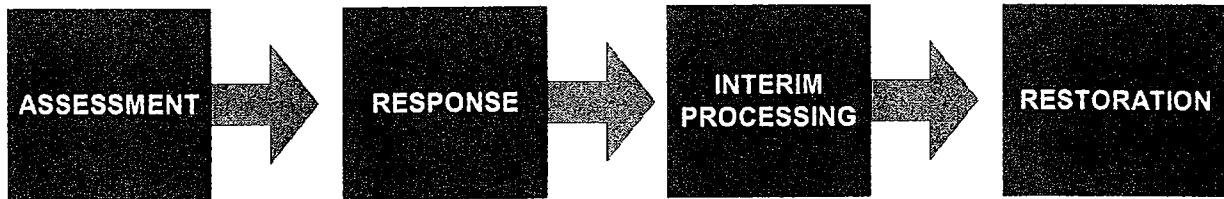
Developing and maintaining a workable BCP program is an essential factor in the County's ability to successfully resume operations following a disruptive event. Contractor's BCP Software shall support a BCP methodology, which provides a structured process and approach to deal with the consequences of the loss of critical facilities, resources, or operational processes in the event of intermittent outages or catastrophic disasters. It shall address disaster response plans that are service area specific, operational recovery and other emergency response plans, as well as restoration and transfer of operations plans and guidelines as appropriate. At minimum, the BCP Software shall support the collection of information necessary for the following activities:

- **Business Impact Analysis/Risk Assessment** – identifying and documenting critical, time-sensitive services/processes, identifying dependencies and interdependencies, assessing the impacts associated with the loss of critical services/processes and establishing viable recovery time frames. Also establishing a priority ranking of services/processes and application systems in line with their importance to the overall function of the County.
- **Strategy Development** – documenting business continuity/disaster recovery strategies that will enable each critical service/process to be recovered within the identified time frame.

The BCP methodology supported by the BCP Software shall facilitate the development and documentation of strategies needed to overcome disruptions and address the stages necessary for complete recovery. The stages of recovery are identified in Figure 1 below.

- **Plan Development** – documenting procedures associated with the selected recovery strategies necessary to restore critical business processes within the required time frame as defined by the Business Impact Analysis (BIA). This includes detailed procedures for managing crisis situations, mobilizing recovery personnel and resources, establishing command and control, coordinating logistics of the recovery operations, and ensuring the life/safety of employees.
- **Testing and Training** – providing documentation for formulation of business disruption scenarios, test plans and drills to evaluate the effectiveness of departmental and countywide plans. In addition, flexible publishing of plan content to support required training.
- **Plan Maintenance** – providing a structured method for updating and refining plans.

**FIGURE 1**  
**STAGES IN RECOVERY OF BUSINESS OPERATIONS**



Each phase is defined as follows:

- **Assessment** – An initial evaluation of the event and assessment of its impact resulting in the decision to declare or not declare an emergency.
- **Response** – The time from the disaster declaration until critical systems and processes have been re-established using strategies documented in the business continuity plan.
- **Interim processing** – The period the organization relies on alternate processes and resources.
- **Restoration** – The period the organization returns from using alternate processes and resources back to use of its *usual* established systems and *business as usual*.

## **2.0 FUNCTIONAL REQUIREMENTS**

Each of the items listed in this Section 2 describe County's functional requirements. Some items are Pass or Fail and the Contractor has completely satisfied these requirements. The response to each item is in the order listed in the form stated. For example, if the item states "Explain", the a clear, concise narrative discussion must be given as to how Contractor will meet County's requirement. Where appropriate sample screen prints of input screens and printouts of plans and reports should be provided. If the item states "May be answered Yes or No", only a "Yes" or "No" answer must be provided. Items are not necessarily listed in order of importance.

### **2.1 BCP Methodology**

- 2.11 Methodology: Contractor must describe in sufficient detail how its BCP methodology and BCP Software addresses the components identified in County BCP methodology described in Section 1 (Business Continuity Planning (BCP) Methodology) above. The clarity of Contractor's narrative discussion of how its BCP methodology contained in the BCP Software meets County's requirements carried considerable weight in the overall selection. **(Explain)**

### **2.2 Designing and Administering Business Continuity Plans**

- 2.2.1 Organization of Plans: Contractor must describe in detail how its BCP Software provides functionality to organize and design all the business continuity planning phases including crisis management, emergency response, and business resumption. **(Explain)**
- 2.2.2 Step-by-Step Methodology: Contractor must describe in detail how the BCP



Software includes a proven step-by-step methodology addressing areas of Prevention, Response, Resumption, Recovery, and Restoration as part of the overall business continuity plan. **(Explain)**

2.2.3 Sample Plans: Contractor's Software should include "sample plans" for data center recovery and interruption of business for multiple threat scenarios addressing topics such as purpose of the plan, scope, objectives, assumptions, roles and responsibilities, contact lists, etc. **(Explain)**

2.2.4 Multiple Plans: Contractor must describe in detail demonstrate how the BCP Software supports the ability to independently and simultaneously develop and maintain recovery plans for the data center, network, telecommunication, business units, facilities, work stoppage, and other response plans as needed by separate work groups. **(Explain)**

## 2.3 Developing Business Continuity Plans

2.3.1 On-line Help: Describe the BCP Software's User Help function including context-sensitive help functions. **(Explain)**

2.3.2 Frequently Asked Questions: The BCP Software should include on-line reference to Frequently Asked Questions (FAQ's). **(Explain)**

2.3.3 Wizards: The BCP Software should include prompts/questions that guide the completion of various functions. **(Explain)**

2.3.4 Interface to Word Processors and Spreadsheets: The BCP Software should provide the ability to interface to the "text" portion plans including dynamic links to word processors and spreadsheets, specifically MS Word, MS Excel, Correl WordPerfect, Correl Quattro Pro, and Lotus 1-2-3 file formats. **(Explain)**

2.3.5 External System Interfaces: Contractor must describe in detail how data may be easily imported, exported and updated among different systems and among the various response plans, e.g., human resources data, facilities data, application system data and purchasing as shown in Appendix C (Functional and Technical Requirements), Exhibit 1 (Potential System Interface Diagram) attached to Exhibit I (County's Request for Proposals for Business Continuity Planning Software and Services). **(Explain)**

2.3.6 Data Mapping: The BCP Software should include a mapping utility to help specify how files are laid out and how data elements from various files relate to each other. **(Explain)**

2.3.7 Data Gathering Tools: The BCP Software should include data gathering tools which allow questionnaires and data entry screens to be sent to users, via disk, network files, Hyperlink Tex Markup Language (HTML), or Messaging Application Program Interface (MAPI) compliant E-mail. **(Explain)**

2.3.8 Hierarchy of Plans: The BCP Software must support departmental and an enterprise plan. As multiple plans are developed, the proposed software should display those plans in a graphical hierarchical format (similar to Explorer), so views can be expanded and collapsed, allowing for drag and drop of selected plan data from one plan to another. **(Explain)**

- 2.3.9 Enterprise Plan: Contractor should describe how multiple departmental plans can be rolled into one master plan. **(Explain)**
- 2.3.10 Plan Interdependencies: The BCP Software should allow interdependencies between processes and multiple plans to be viewed and tracked. **(Explain)**
- 2.3.11 Call-back Trees: The BCP Software should be able to create calling trees to display everyone that needs to be called and who calls them in the event of an emergency. **(Explain)**
- 2.3.12 Resource Distribution: Contractor must describe in detail how personnel assignment discrepancies can be identified and resolved. **(Explain)**

## **2.4 Customizing The Software**

- 2.4.1 Modifying Displays and Reports: The BCP Software must permit changing the terminology in all the data entry screens and menus to reflect County's specific elements and standards. **(Explain) (This is a Pass or Fail Requirement)**
- 2.4.2 Customization: The BCP Software automatically carries through to reports customized wording on data entry screens. **(Explain)**
- 2.4.3 Resizing Fields: The BCP Software must permit resizing data entry fields. **(May be answered Yes/No)**
- 2.4.4 Adding and Deleting Fields: The BCP Software must permit adding or deleting fields to/from data entry screens. **(May be answered Yes/No)**
- 2.4.5 System Upgrades: Changes to customize the BCP Software automatically carry forward with all software upgrades. **(Explain)**
- 2.4.6 Customizing Standard Reports: The BCP Software must have the ability to customize standard reports. **(Explain) (This is a Pass or Fail requirement).**

## **2.5 Printing and Distributing the Plan**

- 2.5.1 Plan Distribution and Printing: The BCP Software must allow for new plans and updates to be electronically distributed to end-users. **(Explain)**
- 2.5.2 Downloading Plans: The BCP Software allows plans to be downloaded to desktops, laptops or hand held computing devices. **(Explain)**
- 2.5.3 Plan Design: The BCP Software allows user defined plan output based upon County's own unique and specific business requirements. **(Explain)**
- 2.5.4 Embedded Graphics: Contractor should describe how pictures, telecom diagrams, floor charts, maps, etc. can be inserted electronically into the plan so when accessed the graphics are automatically displayed or printed. **(Explain)**
- 2.5.5 Custom Reports: The BCP Software includes a utility that permits creating custom reports. **(May be answered Yes or No)**

- 2.5.6 Enterprise Plan: The BCP Software should provide the ability to create an enterprise plan, which includes summarized information by location, building, floor, business unit, department, etc. **(Explain)**
- 2.5.7 Printing Consolidated Plans: The BCP Software has the ability to link all business unit's plans located in particular facility into a common plan. **(May be answered Yes or No)**
- 2.5.8 Printing Business Unit Plans: The BCP Software supports the ability the collective printing of plans for select business units or locations. **(May be answered Yes or No)**
- 2.5.9 Exporting Data to Word Processing Systems: The BCP Software has the ability to send reports to a specified file (MS Word or Excel, and Corel WordPerfect and Quattro Pro, Lotus 1-2-3, and searchable Adobe Acrobat) placing it in the correct format. **(May be answered Yes or No)**
- 2.5.10 Publishing Plans and Reports to the Internet: The BCP Software has the ability to print plans and reports in HTML or Adobe Acrobat pdf format so they can be viewed over the Internet or Intranet. **(May be answered Yes or No)**
- 2.5.11 Printing Graphics: The BCP Software supports printing of plans and reports that include photographs, telecommunication or network schematics, floor layouts, maps, etc., using OLE (Object Linking & Embedding)? **(May be answered Yes or No)**
- 2.5.12 Electronic Distribution of Plans: The BCP Software allows the County to directly send standard and custom reports via a Messaging Application Program Interface (MAPI) compliant E-mail system. **(May be answered Yes or No)**
- 2.5.13 Devices Supported: Contractor should describe how the software permits the plan or selected parts of it to be downloaded to PC's, Laptop PC's, Handheld PC's, PDA's, etc. **(Explain)**
- 2.6 Maintaining the Plan**
- 2.6.1 Database: The BCP Software plan data must reside in an ODBC compliant, relational database, specifically, Oracle or MS SQL Server. **(This is a Pass or Fail requirement) (May be answered Yes or No)**
- 2.6.2 MS Window Server Compliant: The BCP Software must operate on the Windows Server 2000 or higher operating systems. **(This is a Pass or Fail requirement) (May be answered Yes or No)**
- 2.6.3 Ease of Viewing Data: The BCP Software allows data be viewed and edited in a "datasheet" format (spreadsheet-like). **(May be answered Yes or No)**
- 2.6.4 Update Utilities: The BCP Software provides utilities that allow easy import of data from other systems. **(May be answered Yes or No)**
- 2.6.5 Drag and Drop: The BCP Software has a drag and drop function to quickly and easily move information. **(May be answered Yes or No)**

- 2.6.6 Sorting Data: The BCP Software permits the sorting of entered data based on any data field with a data screen. **(May be answered Yes or No)**
- 2.6.7 Search and Replace: The BCP Software contains a search and replace utility throughout the database portion of the plan. **(May be answered Yes or No)**
- 2.6.8 On-line Update Function: The BCP Software contains a removal and replacement utility to easily remove and undue changes to plan data. **(May be answered Yes or No)**
- 2.6.9 Multiple Plans: Contractor should describe how multiple plans can be maintained and secured in a shared environment. **(Explain)**
- 2.6.10 Multiple Product Licenses: Contractor should describe BCP Software product(s) and the related licensing that meet the County requirement for a perpetual, fully paid, non-exclusive enterprise license. County is estimating 200 users for plan development and approximately 50 users for plan maintenance and testing. The County will entertain additional licensing proposals based upon Contractor's professional experience with similar sized organizations. **(Explain)**
- 2.6.11 Audit Trail: The BCP Software must provide an audit trail file that logs all transactions including User's Login ID, date and time stamp, and change made. **(This is a Pass or Fail requirement) (May be answered Yes or No)**

## **2.7 Using the Plan**

- 2.7.1 Access to Parts of Plans: Contractor should describe how any phase the business continuity plan, e.g., crisis management, emergency response, etc., entire plans, as well as individual business unit plans can be accessed. **(Explain)**
- 2.7.2 On-line Queries: Contractor should describe how the software may be used to execute an on-line query using data entry screens. **(Explain)**
- 2.7.3 Saved Queries: The BCP Software allows queries be saved and reused and printed at a later time. **(May be answered Yes or No)**
- 2.7.4 Creating Schedules: Contractor should describe how the BCP Software provides an interface to Microsoft Project or other project scheduling tools. **(Explain)**
- 2.7.5 Post-Mortem Assessments: The BCP Software includes post-exercise or post-disruption assessment forms. **(May be answered Yes or No)**

## **2.8 Securing the Plan Information**

- 2.8.1 User Profiles: The BCP Software must support role-based security where specific sets of privileges are authorized and associate each user to their appropriate group. **(Explain) (This is a Pass or Fail requirement)**
- 2.8.2 Restricting Access to Plans: The BCP Software must restrict users in accessing specific plan information at the field level. **(Explain) (This is a Pass or Fail requirement)**

- 2.8.3 Preventing Unauthorized Modifications: Contractor must describe how the security in the proposed software restricts users from unauthorized customizing and the use of all administrative functions. **(Explain)**
- 2.8.4 Single or Multiple Users: The BCP Software can be installed on a file server. **(May be answered Yes or No)**
- 2.8.5 Login ID's: Contractor must describe how the BCP Software allows for Login ID's and passwords of at least 8-characters each. **(Explain)**
- 2.8.6 Undocumented "Back Doors": Contractor must describe how all access to its system and data comes through controlled access points and is validated by a COUNTY authorized login ID and password. Contractor must certify that there are no undocumented "Back Doors" or access points into the system. **(Explain)**
- 2.8.7 Audit Trail: Contractor must describe in detail how the BCP Software provides an audit trail file which logs all transactions including User's Login ID, date and time stamp, and change made. **(Explain) (This is a Pass or Fail requirement)**
- 2.9 Value Added**
- 2.9.1 System Support: Contractor must describe if you provide remote technical support. Is direct system access required? If required, how is access secured? **(Explain)**
- 2.9.2 Help Desk Support: Contractor must describe if they provide toll-free technical assistance 24 hours a day, 7 days a week. **(Explain)**
- 2.9.3 Training Support: Contractor must describe their offerings for both on-site and off-site training for technical and end-users. **(Explain)**
- 2.9.4 Training Site: Contractor must describe if they provide training in Southern California. **(Explain)**
- 2.9.5 System Maintenance: Contractor must describe if they provide updates and new releases as part of the maintenance contract. **(Explain)**
- 2.9.6 Communication: Contractor must describe if they provide an Internet Web Site, Email, and bulletin board service that allows for down loading updates, fast response to questions, and exchanging information with other users. **(Explain)**
- 2.9.7 Newsletter: Contractor must describe if they publish newsletters to customers abreast of new developments among the user community and industry. **(May be answered Yes or No)**
- 2.9.8 User's Group: Contractor must describe if there is an organized open forum for user information exchange and education (User Group) at least annually. **(May be answered Yes or No)**
- 2.9.9 Professional Services: Contractor must describe their range of consulting assistance available to support the County's project. **(Explain)**

### 3.0 TECHNICAL REQUIREMENTS

Each of the items listed in this Section 3 describe County's technical requirements. Some items are Pass or Fail and Contractor's system must completely satisfy these requirements. Contractor must respond to each item in the order listed in the form stated. For example; if the item states "Explain", Contractor must give a clear, concise narrative discussion as to how Proposer will meet County's requirement. If the item states "May be answered Yes or No", Contractor may provide only a "Yes" or "No" answer. Items are not necessarily listed in order of importance.

#### 3.1 System Infrastructure Requirements

- 3.1.1 Web Based Software: The BCP Software must utilize web-based technologies. Web based BCP Software is defined as a solution that utilizes Web browsers as the only required component installed on the client computer. The Web browser accesses reporting components that reside on the application server or on the database server to provide the full and total reporting functionality of the BCP solution. Los Angeles County prefers to utilize a Microsoft's Internet Explorer or a Netscape browser with no client side plug-ins and no Java runtime applets. **(Explain) (This is a Pass or Fail Requirement)**
- 3.1.2 Operating Software: The BCP Software must operate on the Windows Server 2000 or higher operating systems. **(Explain) (This is a Pass or Fail Requirement)**
- 3.1.3 Hardware: The system must operate on HP ProLiant BL (rack-mount blade) and DL (rack-mount) servers. **(May be answered Yes or No)**

#### 3.2 Database Requirements

- 3.2.1 Database: The BCP Software plan data must reside in an Object Database Connectivity (ODBC) compliant, relational database, specifically Oracle or MS SQL Server. **(Explain) (This is a Pass or Fail Requirement)**
- 3.2.2 Database: Contractor must identify if the BCP Software uses MS SQL Server 2000 or Oracle 9.i or later as its primary data repository. **(Explain)**
- 3.2.3 Database Migration: Contractor must identify if the software presents the same look, feel and functionality regardless of the database product (MS SQL Server or Oracle), and if users can migrate seamlessly from MicroSoft SQL Server to Oracle. **(Explain)**
- 3.2.4 Database Migration: Contractor must identify the impact on technical and end-users if migrating from MS SQL Server to Oracle. **(Explain)**
- 3.2.5 Data Dictionary: The BCP Software must contain a data dictionary. **(May be answered Yes or No)**

#### 3.3 System Interface Requirements

- 3.3.1 External System Interfaces: The BCP Software must contain an Application Program Interface (API) that can be used by the County to develop

interfaces to external systems. **(May be answered Yes or No)**

- 3.3.2 Fully Integrated Modules: The BCP Software must eliminate data redundancy and multiple entries by storing data once and accessing it across various modules. **(May be answered Yes or No)**

### 3.4 Importing Data

- 3.4.1 Data Mapping: Contractor must describe how it provides utilities to aid in correlating data items from external systems to the BCP Software's data base structure. **(Explain)**
- 3.4.2 Data Gathering Tools: Contractor must describe software utilities to aid in gathering data from both electronic and manual sources. **(Explain)**
- 3.4.3 Batch Update Utilities: The BCP Software must provide utilities for batch updating data from external systems. **(May be answered Yes or No)**
- 3.4.4 Business Rules Based Edits and Validations: Contractor must describe how the BCP Software permits establishing unique data validation criteria. **(Explain)**

### 3.5 System Security

- 3.5.1 Encrypted Passwords: The BCP Software enables passwords to be encrypted. **(May be answered Yes or No)**
- 3.5.2 Encryption of Stored Data: Contractor must describe how the BCP Software allows for encryption of sensitive data stored in the database. **(Explain)**
- 3.5.3 Encryption of Transmitted Data: Contractor must describe how the BCP Software allows for encryption of sensitive being transmitted using Secure Socket Layer (SSL) Certificates or by other means. **(Explain)**

### 3.6 Ease of Use

- 3.6.1 Graphical User Interface (GUI) and Ease of Use: Contractor's system should incorporate all of the following:
- Use Internet Explorer 5.5 or Netscape 6.0 or later.
  - Should be 100% web-based thin client.
  - Should enable point and click as well as function keys.
  - Users should be able to specify and retain PF key definitions that differ from default PF key definitions.
  - Should have the option to display or not display PF key definitions.
  - Should provide the option of using either menus or commands.
  - Should perform quick access to modules without going through multiple layers of menus or commands.
  - Should minimize manual data entry by utilizing automatic fill features.
  - Users should not be required to enter separation constants or characters for fields such as slashes for dates, colons for time and parenthesis or dashes for telephone numbers.

- Should provide for a "copy" feature in order to create new records from old records when only minor changes are required.
- Should use "drag and drop" to copy data.

**(May be answered Yes or No) (If any item is "No", explain)**

### **3.7      Licensing and Support**

3.7.1      Software Licensing: Contractor must describe how licensing and cost is determined for each BCO Software package required to run the system. **(Explain)**

3.7.2      Warranty: Contractor must describe how the scope and provisions of their BCP Software and professional services warranty. Such warranty shall be for a period of not less than 90 days. **(Explain)**

3.7.3      Multiple Users: Contractor must describe any restrictions on the total number of users and multiple, simultaneous (concurrent) users are supported. **(Explain)**

3.7.4      Scalability: The BCP Software licensing offered by Contractor allows the County to increase various modules or functionality and adding users as County desires without increased licensing costs. **(May be answered Yes or No)**

3.7.5      Technical Support: Contractor must provide remote technical support with emergency response within 4 hours, 24 hours per day, 7 days per week, 365 days per year. **(May be answered Yes or No) (This is a Pass or Fail Requirement)**

3.7.6      Y2K Compliant: Contractor'S system must be Y2K compliant. **(May be answered Yes or No) (This is a Pass or Fail Requirement)**



**EXHIBIT A**

**ATTACHMENT 2  
BUSINESS CONTINUITY PLANNING SOFTWARE**

# EXHIBIT A

## ATTACHMENT 2

### BUSINESS CONTINUITY PLANNING SOFTWARE

The BCP Software acquired under this Agreement includes, but is not limited to, BIA Software and LDRPS Software, including Customizations and any Third Party Software components used by Contractor to provide a BCP solution for County, and any software developed by Contractor for County in providing Additional Consulting services, if any. Subject to Paragraph 11.2 (License) of the body of the Agreement, the BCP Software provided by Contractor as of the Effective Date shall, at a minimum, meet the specifications set forth below.

Section	Software Module/Component	License Type
I.	<p><u>Business Impact Analysis (BIA) Professional Web Server Software</u></p> <p>BIA Professional Web Server Software for unlimited use with the BCP Software. Contractor's BIA web survey and analysis software, accessible using a web browser, provided to County under this Agreement for the purpose of guiding an organization in identification and documentation of critical, time sensitive services and processes, identifying dependencies and interdependencies, assessing impacts associated with the end of critical, time sensitive services and processes and establishing viable recovery time frames and other BCP solutions in order to meet County BCP Requirements.</p>	Unlimited User License
II.	<p><u>Living Disaster Recovery Planning Software (LDRPS) Web Server Software</u></p> <p>LDRPS Web Server Software 20 Concurrent User Licenses are perpetual, irrevocable, and non-exclusive to use the LDRPS Software. Contractor's LDRPS software, accessible using a web browser, provided to County under this Agreement for the purpose of guiding an organization in development and maintenance of business resumption, business recovery, disaster recovery and contingency plans in the event of a disaster or major disruption to County operations.</p>	20 Concurrent User Licenses

**EXHIBIT A**

**ATTACHMENT 3  
COUNTY HARDWARE CONFIGURATION**

# EXHIBIT A ATTACHMENT 3 COUNTY HARDWARE CONFIGURATION

The following are the minimum County Hardware requirements for Contractor's BCP Software.

## I. LDRPS 9.0 - System Requirements

Pentium II, 266MHz  
64 MB of RAM  
A hard disk drive with 200MB of free space  
A CD-ROM drive  
VGA (800X600), 16-bit colors  
Microsoft Windows 95/98/NT/2000

## II. LDRPS 9.0 - Database Server Requirements

Concurrent Users	CPU Memory	Memory
10	Dual-Pentium-II 400 MHz	256 MB
15	Dual-Pentium-II 400 MHz Dual	384 MB
20	Pentium-II 400 MHz Dual Xeon	512 MB
25	Pentium-II 400 MHz Dual Xeon	640 MB
30	Pentium-II 400 MHz Dual Xeon	768 MB
35	Pentium-II 400 MHz Dual Xeon	896 MB
40	Pentium-II 400 MHz Four Xeon	1024 MB
45	Pentium-II 400 MHz Four Xeon	1152 MB
50	Pentium-II 400 MHz Four Xeon	1280 MB

## III. LDRPS 9.0 - Requirements

NT with Service Pack 6 and Option Pack 4.0.

Concurrent Users	CPU Memory	Memory
10	Dual-Pentium-II 400 MHz	256 MB
15	Dual-Pentium-II 400 MHz Dual	384 MB
20	Pentium-II 400 MHz Dual Xeon	512 MB
25	Pentium-II 400 MHz Dual Xeon	640 MB
30	Pentium-II 400 MHz Dual Xeon	768 MB
35	Pentium-II 400 MHz Dual Xeon	896 MB
40	Pentium-II 400 MHz Four Xeon	1024 MB
45	Pentium-II 400 MHz Four Xeon	1152 MB
50	Pentium-II 400 MHz Four Xeon	1280 MB

**EXHIBIT B**

**SCHEDULE OF PAYMENTS**

## EXHIBIT B SCHEDULE OF PAYMENTS

### I. DELIVERABLES

DELIVERABLE NUMBER	DELIVERABLE TITLE	PAYMENT AMOUNT
1.1	Project Control Document (PCD)	0
1.2	Status Meetings and Status Reports	0
2.1.1	Deliver and Install Baseline BIA Professional Web Server Software	0
2.1.2	Deliver and Install Baseline LDRPS Web Server Software	0
2.2.1	Unit and Integration Installation Test Results Report for Baseline BIA Professional Web Server Software (includes \$3,001 for BIA Software Maintenance & Technical Support)	16,782
2.2.2	Unit and Integration Installation Test Results Report for Baseline LDRPS Web Server Software (includes \$34,434 for LDRPS Software Maintenance & Technical Support)	187,352
2.3.1	Planning Methodology Training for Baseline BIA Professional Web Server Software and Baseline LDRPS Web Server Software	1,166
2.3.2	Software Administration Training for Baseline BIA Professional Web Server Software, Baseline LDRPS Web Server Software, and Seagate Crystal Reports Software	3,498
3.1.1	Prototype of Baseline BIA Professional Web Server Software Customization	0
3.1.2	Prototype of Baseline LDRPS Web Server Software Customization	0
3.2.1	Baseline BIA Professional Web Server Software Customization Design Document	1,982
3.2.2	Baseline LDRPS Web Server Software Customization Design Document	22,791
3.3.1	Baseline BIA Professional Web Server Software Customization for Production Use	0
3.3.2	Baseline LDRPS Web Server Software Customization for Production Use	0
3.4.1	Unit and Integration Installation Test Results Report for Customized Baseline BIA Web Server Software	7,927
3.4.2	Unit and Integration Installation Test Results Report for Customized Baseline LDRPS Web Server Software	91,162
3.5.	County Enterprise and Departmental Reports for Use with Customized Baseline BIA Professional Web Server Software and Baseline LDRPS Web Server Software	13,762
4.1	BCP Methodology Training and End User Training for Departmental BCP Coordinators	4,662
5.1	BCP Software Maintenance and Technical Support Services	*
5.2	Additional Consulting Services (Fixed Hourly Rate of \$200.00)	**

\* BCP Software Maintenance and Technical Support services payments are included in the totals for Deliverables 2.2.1 and 2.2.2 referenced above.

\*\* Payments rendered for such Additional Consulting services may be provided either on a fixed price or a time and materials basis, as agreed to in advance by County and Contractor.

## II. EXTENDED SOFTWARE MAINTENANCE

Should this Agreement be extended for an Extended Term of three (3) years for years 4 through 6, County obligation for Maintenance and Technical Support for the Licenses licensed on the Effective Date shall be as provided below. Contractor shall invoice County for such Maintenance and Technical Support services annually on the anniversary date of this Agreement.

DESCRIPTION	YEAR 4	YEAR 5	YEAR 6
BIA Web Server Software	2,233	2,233	2,233
LDRPS Web Server Software	24,733	24,733	24,733

## III. OPTIONAL ADDITIONAL CONSULTING SERVICES, SOFTWARE LICENSES AND MAINTENANCE AND TECHNICAL SUPPORT

### A. ADDITIONAL CONSULTING SERVICES

The Fixed Hourly Rate for Additional Consulting services provided by Contractor to County under this Agreement in accordance with Paragraph 5.1.9 (Additional Consulting (Optional)) of the body of the Agreement shall not exceed \$200.00 per hour. Such Additional Consulting services may be provided either on a fixed price or on a time and materials basis, as agreed to by County and Contractor.

### B. ADDITIONAL SOFTWARE LICENSES AND MAINTENANCE AND TECHNICAL SUPPORT

During the term of this Agreement, should County elect to purchase additional Licenses for LDRPS Software, such additional Licenses and related Maintenance and Technical Support services shall be made available and provided by Contractor to County at the rates set forth in this Section III.B below.

#### 1. Initial Term (Years 1-3)

Additional Licenses and related Maintenance and Technical Support services shall be provided by Contractor to County during the Initial Term at the following rates:

<b>LICENSE FEE</b>	Additional blocks of 10 Concurrent Licenses @ \$29,980 total
<b>ANNUAL MAINTENANCE</b>	Additional Maintenance & Technical Support services @ the rate of 15% of the total cost for such additional Licenses

2. Extended Term (Years 4-6)

Additional Licenses and related Maintenance and Technical Support services shall be provided by Contractor to County during the Extended Term at the following rates:

<b>LICENSE FEE</b>	Additional blocks of 10 Concurrent Licenses @ \$29,980 total
<b>ANNUAL MAINTENANCE</b>	Additional Maintenance and Technical Support services @ the rate of 16.1% of the total cost for such Additional Licenses



**EXHIBIT C**

**PROJECT SCHEDULE**

**EXHIBIT C**  
**PROJECT SCHEDULE**

Project Schedule shall be developed by Contractor pursuant to Exhibit A (Statement of Work).

***[Inserted here]***

P:\Projects\Business Continuity Planning\Board Letter & Agreement\Final\ExhibitCprojectschedule.DOC

**EXHIBIT D**

**CONTRACTOR EMPLOYEE ACKNOWLEDGEMENT  
AND CONFIDENTIALITY  
AGREEMENT**

**EXHIBIT D**  
**CONTRACTOR EMPLOYEE ACKNOWLEDGEMENT AND**  
**CONFIDENTIALITY AGREEMENT**

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

CONTRACTOR/EMPLOYER NAME: \_\_\_\_\_

CONTRACTOR NUMBER: \_\_\_\_\_

GENERAL INFORMATION:

The organization identified above is under contract to provide certain services to the County of Los Angeles ("the County"). The County requires each employee of this contractor performing services under this contract to understand his/her obligations to protect the confidentiality of the personal and proprietary data with which he/she will be in contact, and to acknowledge such obligations by executing this Contractor Employee Acknowledgment and Confidentiality Agreement.

EMPLOYEE STATUS ACKNOWLEDGMENT:

The contractor referenced above is my sole employer under the above-referenced contract. I am not an employee of the County for any purpose whatsoever, and I do not have and will not acquire any rights or benefit entitlements of any kind whatsoever from the County by virtue of my performance under such contract.

CONFIDENTIALITY AGREEMENT:

My work may be concerned with services provided by the County, and therefore I may have access to confidential data and information pertaining to private individuals and/or entities receiving such services. I may also have access to proprietary information belonging to other organizations doing business with the County. The County has a legal obligation to keep confidential all such data and information in its possession, especially data and information concerning health, criminal and welfare recipient records. By virtue of my involvement in County work, I too must protect the confidentiality of such data and information. I understand I must sign this agreement to be eligible to perform work for my employer under the County contract. I have read this agreement and have taken due time to consider it prior to signing.

I agree not to disclose to nor reproduce for the benefit of any unauthorized person, any data or information obtained while performing work under the above-referenced contract between my employer and the County. I agree to forward all requests for disclosure or copying of any such data or information in my possession or care to my immediate supervisor.

I agree to keep confidential all health, criminal and welfare recipient records, all data and information pertaining to persons and/or entities receiving services from the County, all design concepts, algorithms, programs, formats, documentation, contractor's proprietary information, and all other original materials produced, created or provided to or by me under the above-referenced contract. I agree to protect these confidential materials against disclosure to other than my employer or County employees who have a need to know the information. I agree that if proprietary information supplied by other County vendors is provided to me during this employment, I shall keep such information confidential.

I agree to report to my immediate supervisor any and all unauthorized disclosures or copying of confidential or proprietary data or information, whether accidental or intentional, and whether by myself and/or by any other person, of which I become aware. I agree to return all confidential materials to my immediate supervisor upon completion of this contract or upon termination of my employment with employer, whichever occurs first.

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PRINTED: \_\_\_\_\_

POSITION: \_\_\_\_\_

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**EXHIBIT E**

**CONTRACTOR'S EEO CERTIFICATION**

**EXHIBIT E**  
**CONTRACTOR'S EEO CERTIFICATION**

Strohl Systems Group, Inc.  
Company Name

631 Park Ave., King of Prussia, PA 19406  
Address

23-2083518  
Internal Revenue Service Employer Identification Number

**GENERAL**

In accordance with provisions of the County Code of the County of Los Angeles, the Proposer certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

CERTIFICATION	YES	NO
1. Proposer has written policy statement prohibiting discrimination in all phases of employment.	( X )	(   )
2. Proposer periodically conducts a self-analysis or utilization analysis of its work force.	( X )	(   )
3. Proposer has a system for determining if its employment practices are discriminatory against protected groups.	( X )	(   )
4. When problem areas are identified in employment practices, Proposer has a system for taking reasonable corrective action to include establishment of goal and/or timetables.	( X )	(   )

  
Signature

07-07-03  
Date

Stephen R. Signore, Jr. Director, Legal Affairs  
Name and Title of Signer (please print)

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**EXHIBIT F**

**SOURCE CODE ESCROW**

## EXHIBIT F SOURCE CODE ESCROW

Strohl Systems has deposited and will maintain current a copy of the source code and related documentation (together, "Source Code") with the third party designated below, or any successor thereof, who shall act as escrow agent ("Escrow Agent") and who shall be responsible to perform its obligations and to act in a reasonable and prudent manner with regard to this escrow arrangement. Strohl Systems will register Customer with Escrow Agent who will inform Customer in writing that Customer has been enrolled in the escrow program.

Escrow Agent: DSI Technology Escrow Services, Inc.; 9265 Sky Park Court, Suite 202, San Diego, CA 92123.

In the event of Strohl Systems' insolvency, the agreement with Escrow Agent authorizes Escrow Agent to make and release a copy of the Source Code to Customer if Escrow Agent receives a written instruction from Strohl Systems or its trustee in bankruptcy. Strohl Systems or its trustee will have no obligation to authorize an escrow release to a Customer whose License Agreement or Maintenance Agreement is invalid or has lapsed or terminated.

Customer may also request Escrow Agent to release the Source Code by providing Escrow Agent with:

- copies of fully executed License and Maintenance Agreements which are valid and in effect at the time of Customer's request for release of products held by Escrow Agent
- written notice of its request for release of an escrowed product identifying the occurrence of one or more of the filing conditions described below.
- written notice that the escrowed Source Code to be released will be used by Customer only as permitted under the License Agreement
- specific delivery instructions along with copying and delivery fees
- written notice that the release of the escrowed Source Code is pursuant to 11 United States Code Section 365(n)

Filing conditions upon whose occurrence Customer may request the release of Source Code:

- existence of any one of the following circumstances involving Strohl Systems which remain uncorrected for more than sixty (60) days: failure to continue to do business in the ordinary course without successor; entry of an order for relief under Title 11 of the United States Code; making a general assignment for the benefit of creditors; appointing a general receiver or trustee in bankruptcy; action under any state insolvency or similar law for bankruptcy, reorganization or liquidation
- existence of any one of the following circumstances involving Strohl Systems which remain uncorrected for more than ninety (90) days: abandonment of product with no successor, discontinuance of maintenance service with no successor, or material failure to perform maintenance/support obligations

Escrow Agent will notify Strohl Systems of Customer's request for escrow release via certified mail or commercial express mail service giving Strohl Systems an opportunity to respond with a contrary instruction. A contrary instruction is a notice from Strohl Systems to Escrow Agent that Strohl Systems disputes the release of Source Code. If Strohl Systems responds with a contrary instruction within thirty (30) days of receipt of the notice from Escrow Agent, Escrow Agent will not release the Source Code but will instead notify Customer that there is a dispute to be resolved. If Strohl Systems does not respond with a contrary instruction within thirty (30) days, Escrow Agent is authorized to release the Source Code. In the event that Customer believes that Strohl Systems is acting arbitrarily, Customer shall have the right to seek injunctive relief.

If Source Code is released to Customer, Customer will have the right to modify the Source Code for Customer's internal use only. If Customer modifies the Source Code, Strohl Systems is released from any responsibility to maintain it. The Source Code, modified or not, is subject to the same restrictions on use, reproduction and disclosure as described in the License Agreement with respect to the product licensed.



**EXHIBIT G**

**BUSINESS ASSOCIATE AGREEMENT**

**EXHIBIT G**  
**BUSINESS ASSOCIATE**  
**PROTECTED HEALTH INFORMATION DISCLOSURE AGREEMENT**

\_\_\_\_\_, Business Associate

This Business Associate Protected Health Information Disclosure Agreement ("Agreement") is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2003 ("Effective Date"), by and between \_\_\_\_\_, a \_\_\_\_\_ corporation ("Covered Entity"), and \_\_\_\_\_, a \_\_\_\_\_ ("Business Associate").

**RECITALS**

WHEREAS, the parties have executed an agreement whereby Business Associate provides services to Covered Entity, and Business Associate receives, has access to or creates Protected Health Information in order to provide those services ("Services Agreement");

WHEREAS, Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Parts 160 and 164 ("Privacy Regulations");

WHEREAS, the Privacy Regulations require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**DEFINITIONS**

1.1 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.

1.2 "Individual" means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.3 "Protected Health Information" has the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered

Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity.

1.4 "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

1.5 "Services" has the same meaning as in the Services Agreement.

1.6 "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.

1.7 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Regulations.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

- (a) shall Use and Disclose Protected Health Information as necessary to perform the Services, and as provided in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 4.3 and 5.2 of this Agreement;
- (b) shall Disclose Protected Health Information to Covered Entity upon request;
- (c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
  - (i) Use Protected Health Information; and
  - (ii) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose.

2.2 Adequate Safeguards for Protected Health Information. Business Associate warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the minimum necessary in accordance with the Privacy Regulation's minimum necessary standard.

2.3 Reporting Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity each Use or Disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors but is not specifically permitted by this Agreement. The initial report shall be made by

telephone call to [the Departmental Privacy Officer], telephone number \_\_\_\_\_ within forty-eight (48) hours from the time the Business Associate becomes aware of the non-permitted Use or Disclosure, followed by a full written report no later than ten (10) business days from the date the Business Associate becomes aware of the non-permitted Use or Disclosure to the Chief Information Privacy Officer at:

Chief Information Privacy Officer  
Kenneth Hahn Hall of Administration  
500 West Temple ST.  
Suite 493  
Los Angeles, CA 90012

2.4 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

2.5 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

2.6 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity.

2.7 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) business days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.

2.8 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors.

Any accounting provided by Business Associate under this Section 2.8 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.8, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from

Covered Entity, information collected in accordance with this Section 2.8 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

### **OBLIGATION OF COVERED ENTITY**

3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

### **TERM AND TERMINATION**

4.1 Term. The term of this Agreement shall be the same as the term of the Services Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.

4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in the Services Agreement, upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- (a) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

- (b) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

- (c) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary of the federal Department of Health and Human Services.

4.3 Disposition of Protected Health Information Upon Termination or Expiration.

- (a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement and the Services Agreement, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the

return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## MISCELLANEOUS

5.1 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.

5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of the Services Agreement, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of the Services Agreement.

5.4 Regulatory References. A reference in this Agreement to a section in the Privacy Regulations means the section as in effect or as amended.

5.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Regulations.

5.6 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date stated above.

**Business Associate:**

**CLIENT:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

